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EKOS Research Associates Inc.

National Justice Survey 2017: Issues in Canada's Criminal Justice System

Summary Report

Prepared for:
The Department of Justice

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Department of Justice Canada
Ministère de la Justice Canada

Canada

EKOS RESEARCH ASSOCIATES

Contact: Susan Galley

Ottawa Office
359 Kent Street, Suite 300
Ottawa, Ontario
K2P 0R6
Tel: (613) 235 7215
Fax: (613) 235 8498
E-mail: pobox@ekos.com

www.ekos.com

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EXECUTIVE SUMMARY

The Department of Justice supports the Minister of Justice and the Attorney General of Canada through administering federal law, developing policies, and providing legal support to government departments and agencies. To inform policy development, public engagement and communications, and to support its mandate, the Department of Justice commissions periodic national surveys to explore Canadians' perceptions, understanding, and priorities on justice-related issues.

This 2017 survey focuses on views and perceptions of the criminal justice system (CJS), in order to inform the ongoing criminal justice system review being undertaken by the Minister of Justice. It seeks to engage with people in all regions of Canada and to promote government transparency and openness. Specifically, the study explores Canadians' views and perceptions of:

- Sentencing (e.g., judicial discretion, sentencing considerations, guidelines)
- Mandatory minimum penalties (MMPs)
- Administration of justice offences (AOJOs)
- Use of diversion/alternative measures
- Restorative justice and problem-solving approaches to justice
- Performance measurement and confidence in the CJS

The study is composed of three components: two national online surveys, and a series of focus groups and telephone interviews.

The **first** national, online survey included just over 2,000 Canadians randomly sampled from EKOS' in-house panel (Probit[1]). For the first survey (known as an *informed* survey), questions were accompanied by information and detailed scenarios to provide context for responses. Three scenarios were presented, each depicting an offence for which an MMP would apply, a few details on the offender (e.g., personal circumstances, level of responsibility taken, whether remorseful) and the crime. The offences depicted were sexual assault involving a minor, recklessly discharging a firearm, and trafficking in opioids while carrying a weapon. The focus was on sentencing, discretion and mandatory minimum penalties. Because of the additional materials provided, it took an average of 31 minutes to complete the survey.

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[1] Prob*it* offers complete coverage of the Canadian population (i.e., Internet, phone, cell phone), random recruitment (i.e., all respondents to our panel are recruited by telephone using RDD and are confirmed by live interviewers – they do not opt themselves into our panel), and equal probability sampling (which means that results are generalizable to the broader population).

In addition, a parallel sample of almost 3,500 individuals was recruited using an open link circulated by Justice Canada and featured on their website. This survey was undertaken to provide an opportunity for open consultation on sentencing and captured the views of more invested Canadians as well as professionals working in criminal justice issues. The results are not generalizable to the broader population, and thus are not a focus of this report.

The **second** national, online survey included just over 2,000 Canadians randomly sampled from EKOS' in-house panel (Probit). This survey was shorter, no scenarios were provided, and many questions did not require the same degree of information/explanation required for questions in the first survey. This survey focused on administration of justice offences (AOJO), restorative justice and problem-solving justice approaches; completion time was shorter, at 18 minutes.

The third component included a series of 12 in-person focus groups and 20 telephone interviews that were conducted to explore selected issues areas in greater depth. Two English focus groups were held in each of Halifax, Toronto, Vancouver, and Edmonton, in addition to one in each of Ottawa and in Winnipeg. Two groups were also held in French in Montréal. Interviews were conducted by telephone with residents of more rural and remote communities. Topics explored included sentencing, MMPs, administration of justice offences, restorative justice and problem-solving approaches to justice, and performance measurement in the CJS.

Key Findings

Because there was overlap in the topics covered across all three components of the study, findings have been integrated into topic areas and are summarized below.

Diversion

Diversion was described to participants of the first survey as providing a way of holding accused people accountable through means other than a trial while still protecting society. Options for diversion can include community service, mediation, referrals to specialized programs for counselling, treatment or education, (for example, life skills, drug or alcohol treatment, anger management), referrals to community or aboriginal committees, victim-offender reconciliation programs and similar measures aimed at restorative justice.

Canadians support the use of diversion or other alternatives to the traditional justice process in the criminal justice system. The first survey revealed that eight in ten respondents believe that dealing with offenders outside of a court process and focusing on alternative measures would make the criminal justice system more efficient. Similarly, seven in ten believe that diversion would make the criminal justice system more effective. Most who support diversion suggest that it speeds up the court process, while some feel it helps to rehabilitate offenders. Of the minority not supporting diversion, many express concerns about the potential for abusing the system, or feel that diversion is generally not likely an effective deterrent and may not have a significant enough impact on reducing reoffending.

Respondents of the first survey, along with participants of the focus groups and interviews, were presented with case scenarios and asked to indicate if the case should be diverted rather than prosecuted. At least half of respondents across all scenarios think that the offenders should be diverted rather than face prosecution (the scenarios depicted sexual assault involving a minor, recklessly discharging a firearm, and trafficking in opioids while carrying a weapon).

Canadians are most supportive of diversion for nonviolent offences in general (4 in 10) and for *first-time* non-violent offenders (3 in 10). Only 1 in 10 think that diversion should be the preferred response for all accused and just under 1 in 10 think it should never be an option. Focus group participants support diversion for cases involving offenders with a cognitive or mental disability, as well as in cases where jail is perceived to do more harm than good.

Problem-Solving Approaches to Justice

Problem-solving justice is an approach aimed at addressing the root causes of crime and conflict. It holds offenders accountable through monitoring participation in community-based programs (e.g., drug treatment, mental health treatment), and tracking progress towards rehabilitation goals. Once informed about the nature of problem-solving approaches to justice, Canadians are largely supportive of this type of approach according to this study. For example, almost six in ten of those in the first survey said that use of this type of approach in Canada should be further promoted. Fewer than one in ten said that they do not see it as an appropriate approach to crime (the remainder were of a moderate view on whether it should be promoted). Many focus group and interview participants, when asked about the use of problem solving **courts** specifically[2], cautioned that any expansion would need to come with additional investment in support programs used by the courts. They believed that to be effective, program resources would need to be well coordinated, integrated, and dedicated to supporting rehabilitation efforts within the criminal justice system.

Support for problem-solving justice is high – 88 per cent of Canadians express at least moderate support for promoting initiatives such as drug and mental health courts or specific courts that provide support for Indigenous offenders. Six in ten (60 per cent) Canadians agree that such approaches can adequately hold people to account for their crime. When respondents were asked to compare problem-solving justice to traditional approaches, 75 per cent of Canadians express high (39 per cent) or moderate (36 per cent) support for the idea that problem-solving justice could reduce rates of re-offending compared with traditional methods of justice. Most focus group and interview participants feel that an integrated approach such as problem solving courts has the potential to help reduce rates of reoffending.

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[2] The focus group respondents talked about problem-solving courts, but second survey respondents talked about problem-solving approaches.

Generally, most focus group and interview participants expressed considerable support for this type of rehabilitative focus, helping vulnerable or marginalized offenders to obtain assistance to address these issues. They noted that offenders with mental health issues, addiction issues, or even those who are unemployed, can become caught in the system, and, as articulated by one focus group participant, "some offenders are more in need of help than punishment."

Many in the focus groups and interviews viewed problem-solving justice as a process that would be of particular benefit to first time offenders, although some argued for even greater need among repeat offenders, where root causes had never been addressed. Some people expressed concerns about the availability of high calibre and effective programs in all communities, as well as the likelihood that this type of approach would not have any significant impact on some repeat offenders, if the offenders are not open to change.

Restorative Justice

Restorative justice (RJ) is an alternative dispute resolution practice that seeks to repair the harm caused by crime. In some instances, RJ programs provide supportive and safe opportunities for communication between those who are affected by an offence (victims, offenders, and/or community members), in situations where an offender has accepted responsibility for the offence and both the victim and the offender voluntarily agree to participate. This study indicates that Canadians are not very familiar with restorative justice. Among survey respondents, half rated themselves as having a low level of familiarity with this type of process. Only one in seven said they are familiar with it. This was similarly reflected in focus group discussions and interviews, where many participants posed questions about the process and outcomes or "success rates". Following some explanation and discussion, however, most participants said they believe that restorative justice has the potential to be an effective way to repair harm caused by crime.

According to survey results, nearly nine in ten Canadians see the value in victims meeting with their offenders to relate the impact of the crime, should they wish to do so. Further, almost two in three survey respondents say they believe restorative justice could result in a more satisfying and meaningful process for victims than the mainstream justice process. Focus group and interview participants speculated that the process could help victims to gain information, understanding, and closure, fulfilling the need to "feel heard". Canadians are correspondingly positive about the potential of restorative justice to improve the healing process of victims and families. Half of survey respondents said it would likely have a positive impact on healing, and another 35 per cent felt there would be a moderate likelihood of having a positive impact as moderate. Some focus group and interview participants argued that victim engagement may help victims feel less disenfranchised or harmed than the traditional court process. In fact, some focus group participants argued that violent crime may be the best use for the process, since it has the potential to help repair the emotional damage from "harsher" crime.

Canadians are positive about the impact of restorative justice on offenders' opportunity to demonstrate accountability for their actions, with 45 per cent believing this to be likely and another 35 per cent saying it would be moderately likely. Fifteen per cent feel it is an unlikely result. Most focus group and interview participants, however, feel that restorative justice would help offenders to understand the impact of their crime and enable them to put "a face" to the victim of crime. Some participants said that offenders may be able to address some root causes of their offence (such as alcohol or anger issues) that might not be addressed through incarceration. A few participants, however, expressed concern for offenders manipulating the process, trying to obtain a lighter sentence, or the process generally having no impact on repeat offenders.

According to survey results, almost two thirds of Canadians believe that restorative justice could be applied in all types of cases, provided participation is voluntary on all sides. Focus group and interview participants are also divided about whether restorative justice would be appropriate or effective for repeat offenders. Others, however, argue that habitual offenders may have the most to gain from restorative justice. The voluntary element is seen as critically important among focus group and interview participants to guard against any situation where the victim may feel threatened or uncomfortable in the process. Similarly, a process that allows for flexibility to implement appropriate conditions, based on the circumstance of the case was also regarded as a key factor in success.

Sentencing

Considerations

Canadians do not perceive their own knowledge of the criminal justice system to be very high. Results from the first survey reveal that four in ten Canadians feel moderately knowledgeable about how criminal courts in Canada sentence people. One in three state they have higher than moderate knowledge and one in four have limited knowledge.

In general, Canadians feel their knowledge of criminal sentencing is limited. Still, they have opinions about sentencing. For example, they do not believe that it is fair and appropriate to give all offenders convicted of the same offence the same sentence. The first survey found that almost all respondents (95 per cent) believe that the seriousness of an offence should be an important consideration for judges when it comes to sentencing decisions. Nearly three in four feel that how blameworthy or responsible the offender is, taking into account their personal circumstances should be a consideration in sentences. Focus group and interview participants further articulated that sentencing should consider the seriousness of the crime and level of harm done.

Discretion in Sentencing

The overwhelming majority of Canadians support judges having some degree of flexibility in determining sentences. Seven in ten support the flexibility of judges to decide on sentences themselves, but within a set of predetermined guidelines. A further one-quarter support an approach in which judges may decide sentences entirely at their own discretion. Survey results reveal little support for sentencing without judicial discretion, with just four per cent saying that judges should give everyone convicted of the same offence the same sentence.

Focus group and interview results show preference among participants for judges to have the flexibility to make decisions on sentences based on the individual cases as judges are seen as understanding the specifics of the cases, have the legal background to make the best decision, and are aware of the precedents of other cases.

In focus groups and interviews, respondents indicate that key considerations of sentencing are the seriousness of the crime and level of harm done. The context of the crime and the offenders' intent to do harm (e.g., spontaneous or planned, presence and degree of provocation), as well as the degree of responsibility taken or remorse shown were other factors also mentioned by participants.

Sentencing Guidelines

Respondents were told that surveys show that many Canadians and some judges believe that sentencing is not consistent. Sentences for the same offence can differ from one case to the next. Respondents were told that use of sentencing guidelines could help sentencing to be more consistent by providing a range of sentences for each offence. This would enable judges to choose within a range based on how each offence happened and why and how the offender did it. It was further explained that, in unusual cases, a judge could go outside these choices, and provide their reasons for doing so. Many countries have guidelines within their courts to follow at sentencing, including the United Kingdom and the United States, however no such guidelines exist in Canadian courts.

Canadians strongly believe that sentencing guidelines would be effective. Over eight in ten respondents in the first survey believe that guidelines for sentencing would make sentences more consistent. Survey results highlight interest in support for introducing sentencing guidelines in for Canada. Most (eight in ten) believe that such guidelines should be considered, compared to just one in ten who are opposed to them. Focus group and interview participants likewise support sentencing guidelines or suggested ranges to help judges maintain consistency. While many participants support sentencing ranges, those opposed to them said they see this as another form of a mandatory minimum sentence. Similarly, some suggested that judges would have the latest information on similar crimes in order to make sentencing decisions, and know what works best in different scenarios. A few participants said that written rationales for lighter sentences or some checks and balances should be considered, including a review process involving multiple judges.

Sentencing commissions

A number of countries including Australia, the United Kingdom, and the United States have an independent organization comprised of judges, criminal justice professionals, crime victims' advocates, and academics which undertake one or more of the following activities: give courts/judges guidelines to follow when they decide on sentencing, recommend ideas to reform sentencing to the government, conduct research to develop more effective sentencing practices, and/or give information to crime victims and the public about sentencing practices and research. These independent organizations are referred to as sentencing commissions.

Seven in ten Canadians believe that an independent organization such as a sentencing commission should be considered for Canada. The first survey highlights public confidence in sentencing commissions. Three in four Canadians believe that these commissions would improve sentencing consistency and seven in ten believe that such an independent organization should be considered in Canada. Various aspects of a sentencing commission were deemed important; three-quarters said that giving courts and judges sentencing guidelines would be among the most important aspects. Over half feel that researching effective sentencing practices, recommending sentencing reforms to the federal government, or giving information to crime victims and the public about sentencing practices and research are important aspects.

Mandatory Minimum Penalties (MMPs)

Participants were told that a mandatory minimum sentence is a jail sentence where the minimum length of time for a conviction of a specific crime has been set by Parliament, and a judge may not go below the minimum sentence although they are able to give more than the minimum sentence when it is appropriate. For offences that carry mandatory minimum sentences, judges have no flexibility to sentence someone below the mandatory minimum. In Canada, there are 72 offences in the *Criminal Code* and the *Controlled Drugs and Substances Act* that carry a mandatory minimum penalty (MMP), including the offences noted in the scenarios presented. Overall, Canadians feel they have limited knowledge about MMPs. Half gave themselves a low rating and just over one in four believe their knowledge to be moderate.

Attitudes

The first survey results show only limited support for MMPs that apply indiscriminately to all offenders convicted of the same offence. Only one in six Canadians believe that such an approach leads to fair and appropriate sentences, compared to more than three in four who do not. Three scenarios that depicted offences with MMPs that could come before the court were provided, describing different charges, and levels of responsibility and personal circumstances. In the focus groups and interviews, most provide reasons for not supporting the idea of mandatory minimum penalties.

Among the majority believing MMPs to be unfair, most argued that one size does not fit all and no one solution will work for all offenders or situations. A small proportion argued that the jail sentences put forward as minimums are simply too severe and punitive in nature. A handful also see MMPs as politically motivated. Among the minority in the survey who consider MMPs to be fair, most argued for equal treatment of all offenders or a general "fairness" of treatment. The second reason for support of MMPs is the need for punishment to condemn the crime and/or ensure deterrence. A small proportion suggests that offenders need to take responsibility for their actions, or simply that "it's the law".

Survey results reveal that nearly eight in ten Canadians support a judge's ability to consider a lesser sentence other than jail or prison in circumstances where it may be appropriate, even for offences that currently carry MMPs. The same proportion believe it is important that judges are allowed to impose custodial sentences shorter in duration than the mandatory minimum where the facts of the case suggest a lesser sentence may be appropriate.

Nine in ten Canadians feel that Canada should consider giving judges flexibility to impose a lesser sentence than the mandatory minimum. Of these, five in ten suggest that judges should be able to give a lesser sentence only in exceptional circumstances and four in ten feel that there should be no such restriction (judges can decide to go below of any case) Overall, among those least supportive of MMPs, arguments largely centred on the need for flexibility to make the best decisions about sentences based on the individual elements of each case, in order to find the best solution to addressing root causes and keeping society safe by preventing future crime.

Perceived Benefits

Respondents to the first survey were presented with two contradictory arguments to consider for MMPs. Almost six in ten opted for the position that MMPs increase the gap between rich and poor because those with resources are better able to obtain representation, over the argument that such policies improve fairness and equality. Among the minority arguing that MMPs increase fairness, the supporting argument by the majority is that sentences should be consistent for all. A few support MMPs to improve fairness and equality as a method of deterrence, ensuring a penalty and preventing leniency.

Respondents were also presented with the competing arguments that MMPs ensure that sentences are not too light versus the argument that MMPs may be too harsh and may not always be appropriate. By a margin of nearly three-to-one, Canadians lean to the position that guaranteed MMPs do not necessarily lead to fair and appropriate sentencing (69 per cent), although just over one in five said that predetermined sentencing is a measure to ensure consequences are not too light. Among those believing that MMPs may impose sentences that are too harsh and generally not fair, most argued that MMPs eliminate the discretion to consider the circumstances of each individual case (for three out of four respondents). Another one in ten feel it ensures equal treatment in terms of financial access to representation and the system.

Respondents were asked about the perceived effectiveness of MMPs as a deterrent to committing crimes. By a margin of three-to-one respondents rejected the argument that mandatory minimums act as a strong deterrent, compared to one in four who see these policies as an effective deterrent.

According to results of the first survey, just over half of Canadians believe that the use of MMPs increases pressure on the courts, and only one in five see this policy as alleviating pressure on the judicial system.

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POLITICAL NEUTRALITY CERTIFICATION

This certification is to be submitted with the final report submitted to the Project Authority.

I hereby certify as Senior Officer of EKOS Research Associates Inc. that the deliverables fully comply with the Government of Canada political neutrality requirements outlined in the Communications Policy of the Government of Canada and Procedures for Planning and Contracting Public Opinion Research.
Specifically, the deliverables do not include information on electoral voting intentions, political party preferences, standings with the electorate, or ratings of the performance of a political party or its leaders.

Signed by: Susan Galley (Vice President)

1. INTRODUCTION

The Department of Justice supports the Minister of Justice and the Attorney General of Canada through administering federal law, developing policies, and providing legal support to government departments and agencies. The Department has periodically commissioned the National Justice Survey, which seeks to understand Canadians' perceptions, understanding, and priorities on justice-related issues.

This 2017 research is used to inform policy development, public engagement, and communications. It also provides an understanding of Canadians' attitudes toward the criminal justice system in particular areas relevant to the review. These are:

- sentencing values and mandatory minimum penalties (MMPs);
- bail and remand;
- administration of justice offences (AOJOs);
- restorative justice;
- problem-solving courts;
- performance measurement; and,
- confidence in criminal law.

1.1 SURVEY SAMPLE CHARACTERISTICS

Appendix A presents details of the methodology used to collect the surveys, including the collection method, sample sources used, response rates and weighting procedures, as well as confidence interval and margin of error.

The following table presents a sample profile for the first and second surveys. This includes demographic characteristics related to region, gender, age, education, income, employment, and identification of immigrants and other minority groups. An overall comparison of sample characteristics shows the two surveys to be very similar. In general, any disparities between the two samples are slight, and do not represent meaningful differences.

Table 1: Sample Characteristics

1.1a: Province (unweighted)

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
British Columbia	13%	13%
Alberta	11%	11%
Manitoba and Saskatchewan	8%	8%
Ontario	37%	38%
Quebec	22%	20%
Atlantic	7%	10%
Territories	0%	0%
No response	2%	0%

1.1b: Type of community

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
Urban	77%	79%
Rural	20%	18%
Remote	2%	1%

1.1c: Gender (unweighted)

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
Male	50%	49%
Female	50%	50%

1.1d: Age (unweighted)

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
<25	7%	6%
25-34	15%	13%
35-44	15%	15%
45-54	20%	19%
55-64	21%	24%
65+	21%	22%
No response	1%	0%

1.1e: Education (unweighted)

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
Elementary school or less	3%	5%
Secondary school	13%	22%
Some post-secondary	10%	10%
College, vocational or trade school	29%	28%
Undergraduate university program	25%	22%
Graduate or professional university program	18%	12%
No response	1%	1%

1.1f: Household Income

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
Under $20,000	10%	9%
$20,000 to just under $40,000	15%	15%
$40,000 to just under $60,000	15%	17%
$60,000 to just under $80,000	13%	13%
$80,000 to just under $100,000	11%	11%
$100,000 to just under $120,000	9%	7%
$120,000 to just under $150,000	5%	7%
$150,000 and above	9%	8%
No response	13%	13%

1.1g: Employment

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
Working full-time (35 or more hours per week)	37%	37%
Working part-time (less than 35 hours per week)	8%	7%
Self-employed	8%	9%
Student attending full time school (not working)	4%	4%
Unemployed, but looking for work	4%	4%
Not in the workforce	12%	10%
Retired	24%	26%
Other	1%	2%
No response	1%	2%

1.1h: Born in Canada

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
Yes	90%	88%
No	10%	12%

1.1i: Minority groups

-	First Survey	Second Survey
Total number of cases	*2,019*	*2,027*
A person with a disability	10%	10%
A member of a visible minority	8%	8%
An Aboriginal person	3%	3%
None of the above	76%	76%
No response	4%	5%

In terms of possible response bias, the two panel samples over represent those with post-secondary education, including 43 and 40 per cent with a university level of education in the first and second samples respectively, compared with 23 per cent in the population according to 2011 Census figures, and under represents those with high school/elementary or college levels of education. There are fewer Canadians born outside of Canada represented in the sample (10 to 12 per cent) than are found in the population (25 per cent). There is an underrepresentation of Canadians under 25 (six to seven per cent compared with 13 per cent in the population. Geographically, there is a slight underrepresentation of Québec.

In order to better understand Canadians' perceptions of the criminal justice system, it is first helpful to understand their background or level of exposure to the system. While just over four in ten (44 and 45 per cent) in the survey reported having no previous involvement with the criminal justice system, more than half have had some exposure to it in one or more ways. Just under one in five has been a victim of some type of crime; of these, over half have been the victim of a non-violent crime (10 to 12 per cent overall), and just under half have been the victim/survivor of a violent crime (seven or eight per cent overall). Eight to nine per cent have been accused or convicted of a crime. Typical exposure to the system, however, has been as a family member of an accused or convicted person, or a victim (ranging from eight to 12 per cent), or otherwise knowing a victim or accused individual (21 to 22 per cent). A sizable portion of the sample has witnessed a crime (14 per cent). Much smaller proportions work (six per cent) or volunteer (three to four per cent) in the criminal justice system or in a related area, or have been a member of a jury (five to six per cent).

Table 2: Involvement with CJS

Have you ever been involved in the criminal justice system?

-	First Survey	Second Survey
n=	*2019*	*2027*
Know someone as victim/accused	20%	22%
Testifying as a witness in criminal court	14%	14%
As a family member of an accused/convicted person	12%	11%
As the victim/survivor of a non-violent crime	10%	12%
After being charged/convicted of a crime	8%	9%
As a family member of a victim/survivor	8%	11%
As the victim/survivor of a violent crime	8%	7%
By working in the criminal justice system/Working in a related field	6%	6%
Jury member chosen to participate in a criminal trial	5%	6%
Volunteering in the criminal justice or related area	3%	4%
Other	5%	5%
I have not been involved in the CJS before	45%	44%
Prefer not to answer	3%	4%

1.2 OPEN LINK SURVEY

While not the central focus of this report, comparison results are also briefly described in the text for a sample of 3,486 respondents who participated in the survey through the open link. Overall, results indicate that the respondents to the "open link" sample are much more informed than those from the random survey. In fact, almost half (45 per cent) reported working in the criminal justice system or a related field, and another 16 per cent said they volunteer in the criminal justice system or a related field. Half of those who participated in the survey (48 per cent) through the open link received the link through Facebook or Twitter. Another one in four (27 per cent) received an email invitation with the link. The results from the open survey are not considered to be representative of the broader population, and are not the main focus of this report. More details related to the sample characteristics of the open link survey can be found on Appendix A.

1.3 NOTE TO READERS

Overall results are presented in text, charts, and tables. Bulleted text is used to describe specific segments of the sample if they are statistically and substantively different from the overall results for the entire sample (i.e., at least five per cent or more from the overall mean in any given subgroup). If differences are not noted in the report it can be assumed that they are either not statistically significant in their variation from the overall result or that the difference was judged to be substantively too small to be noteworthy.

Readers should note that results for the proportion of respondents in the sample that either said "don't know" or did not provide a response may not be indicated in any graphic representation of the results. Results may also not total to 100 per cent due to rounding or the "don't know/no response".

2. RESULTS OF THE FIRST SURVEY

Results are presented for the first survey based on the sample of 2,019 Canadians. Some comparison results are also presented for the open link survey, although the latter sample is not considered to be representative of, nor projectable to, the general public.

2.1 KNOWLEDGE OF CRIMINAL SENTENCING IN CANADA

The randomly selected sample of Canadians self-reported as being particularly well-informed with regard to issues around sentencing. The first survey did not focus on providing Canadians with factual information on sentencing or mandatory minimum penalties of imprisonment, but rather context to allow them to more easily respond to questions on topics for which they have low familiarity. Three scenarios that depicted offences with MMPs that could come before the court were provided. These are presented on pages 11, 12 and 13 of Section 2.7, describing different charges, and levels of responsibility and personal circumstances. Canadians were asked about fair and appropriate sentences for each. Then a short description of what MMPs are was provided and more general questions on MMPs were asked. For diversion, sentencing guidelines, and sentencing commissions, a brief description was provided prior to questions being asked.

Canadians perceive their knowledge of how criminal courts in Canada sentence people to be moderate. When asked to rate their knowledge of criminal sentencing in Canada four in ten (40 per cent) said they are 'moderately' knowledgeable (i.e., 4 on a 7-point scale). One in three (34 per cent), meanwhile, rated their knowledge higher than moderate (5, 6 or 7 on the scale), and one in four (26 per cent) indicated limited familiarity (rating themselves with a 1, 2 or 3).

By comparison, more than six in ten (63 per cent) responding to the open link rated their knowledge as considerable (i.e., providing a rating of 5, 6, or 7). In fact, one in three (32 per cent rated their knowledge with a 7 out of 7). One in four indicated moderate knowledge (24 per cent). Thirteen per cent rated their knowledge as limited (between 1 and 3 out of 7).

2.2 IMPORTANCE OF VARIOUS FACTORS IN SENTENCING DECISIONS

Survey results suggest that the vast majority of Canadians believe that the seriousness of an offence should carry a great deal of weight when it comes to sentencing decisions. More than nine in ten respondents (95 per cent) say that it is important that judges consider the seriousness of the offence (i.e., circumstances surrounding the crime). Fewer than five per cent of respondents believe that the seriousness of an offence is of moderate or lesser consequence. Results are similar in the open link with 93 per cent saying the seriousness of the offence is a key consideration.

Canadians are somewhat less apt to prioritize an offender's personal circumstances, although the majority (72 per cent) assign a high level of importance to factoring in how responsible or blameworthy the offender is. One in six (15 per cent) place a moderate level of importance and 12 per cent per cent believe this factor should carry little to no weight. Results from the open link are similar (78 per cent rating this as important).

2.3 ATTITUDES TO GIVING JUDGES FLEXIBILITY IN SENTENCING DECISIONS

Canadians do not believe that it is fair and appropriate to give all offenders convicted of the same offence the same sentence. When prompted with an example of two forms of assault – shoving and punching – nearly six in ten respondents (56 per cent) believe that such behaviours warrant different sentences. Almost four in ten (37 per cent) feel they could not be definitive in their answer without more information. Just six per cent believe that an offender who shoves someone should face the same sentence as an offender who punches someone. Support for different sentences is marginally higher (65 per cent) in the open link.

Respondents were presented with three options representing varying degrees of discretion that judges could have when sentencing offenders. Fully seven in ten (71 per cent) support judges having the flexibility to decide sentences themselves, but only within a set of predetermined guidelines. One-quarter (24 per cent), meanwhile, support a more liberal approach in which judges may decide sentences at their own discretion after looking at how the offence happened, why the offender did it and what sentences were given in other similar cases. Again, results reveal little support for inflexible sentencing, with just four per cent saying that judges should give everyone convicted of the same offence the same sentence. Support for complete freedom among judges is marginally higher in the open link (34 per cent), although the majority still believe that judges should be operating within prescribed guidelines (61 per cent).

2.4 ATTITUDES TO SENTENCING GUIDELINES

Results indicate that Canadians strongly believe that sentencing guidelines would be effective. Indeed, more than eight in ten respondents (83 per cent) believe that guidelines for sentencing would make sentences more consistent. Only one in ten (11 per cent) concur with this premise to a moderate extent, and only four per cent reject the idea. Respondents to the open link are marginally less apt to be convinced of the impact of guidelines on increasing consistency with 70 per cent rating the impact high and 16 per cent saying the impact would be moderate.

Survey results further highlight strong support for introducing sentencing guidelines in Canada. Fully eight in ten Canadians (81 per cent) believe that such guidelines should be considered, compared to just one in ten (11 per cent) who are opposed to them. Results are similar, if marginally tempered in the open link with 71 per cent advocating for greater use of guidelines.

2.5 ATTITUDES TO SENTENCING COMMISSIONS

Survey results reveal strong public confidence that sentencing commissions would be effective. Many believe they will make sentencing more consistent and support their use for making sentencing more consistent as well as making recommendations for sentencing reform and undertaking research. Three in four Canadians (74 per cent) believe that these commissions would improve sentencing consistency and another 15 per cent believe that sentencing commissions would be moderately effective. Very few (seven per cent) believe that sentencing commissions would do little to make sentencing more consistent. Results are similar in the open link with 68 per cent indicating strong belief in the impact of sentencing commissions on consistency, and 15 per cent rating the impact as moderate.

Canadians also expressed clear support for a sentencing commission, albeit to a lesser extent than for establishing sentencing guidelines. Seven in ten (69 per cent) believe that such an independent organization should be considered for Canada, compared to just one in six (16 per cent) who disagree. Results are similar among the open link group (70 per cent).

Respondents were asked to identify – from a prompted list – the aspects of a sentencing commission that they considered to be most important. Three-quarters of respondents (73 per cent) said that giving courts and judges sentencing guidelines would be among the most important aspects. Two-thirds (65 per cent) selected researching effective sentencing practices as important. Six in ten selected recommending ideas regarding sentencing reforms to the federal government (60 per cent) or giving information to crime victims and the public about sentencing practices and research (59 per cent) as important. Although relatively similar, support for research is stronger in the open link (72 per cent), along with sentencing reform (68 per cent), and marginally less strong for giving judges guidelines (63 per cent).

2.6 ATTITUDES TO DIVERSION

Canadians widely believe that the increased use of diversion would improve the criminal justice system, both in terms of its efficiency and its effectiveness. They would choose to divert at least some of the cases that have offences that carry MMPs. Eight in ten (79 per cent) believe that sparing offenders formal prosecution and focusing on alternative measures for holding them to account would make the criminal justice system more efficient, and only one in ten (11 per cent) disagree with this assessment. Similarly, seven in ten (69 per cent) believe that such alternatives would make the criminal justice system more effective, although almost one in five disagree (18 per cent). Support for wider use of diversion is even higher in the open link (76 per cent rating the impact of efficiency and 84 per cent rating the impact on effectiveness positively).

When asked to provide their reasoning, most of those Canadians who support diversion typically said that it speeds up the court process (nearly half). Some (one in five) said that it helps to rehabilitate offenders (i.e., is a tool that has a positive impact on behaviour). The primary reasoning among more than one in four of those not supporting diversion is the perceived potential for abusing the system, that diversion is generally not an effective deterrent and is not likely to have a significant enough impact. Similarly, just over one in five said that it does not hold offenders sufficiently accountable and/or requires stiffer consequences.

2.7 VIEWS ON SCENARIOS WHERE DIVERSION MAY BE APPROPRIATE

Respondents were subsequently presented with three scenarios and, in each case, were asked a series of questions on how the offender should have been held accountable and whether the sentence they received was fair.

Scenario One

David[3] is convicted of sexual assault involving a minor. He is 27 years old, and was heading home after a night of drinking with his friends when he touched the breasts of and tried to grope a stranger, Anna, (a 15 year-old girl) on a city bus. This behaviour was out of character for David who has no previous criminal record of any kind. David lives at home, has completed college, and is employed as a chef. He pled guilty and apologized to the victim in court.

From the results, Canadians are divided on how best to address the case, with half (52 per cent) indicating a preference for having the offender's case diverted. Four in ten (41 per cent), meanwhile, believe that the offender should have remained in the system to face trial. These results are also reflected in the open link.

When asked to provide their reasoning for preferring diversion or the traditional system, those supporting diversion said that it provided opportunity to take responsibility and show remorse, first time offenders should be diverted or that jail can do more harm than a sentenced served in the community. A smaller proportion said that the scenario described represents a minor crime, where there is less risk of re-offending. Among those preferring the traditional court system, by far the primary rationale was that it is a serious offence because the victim is a minor. A smaller proportion said that drinking is not an excuse for this type of behaviour. A few said that a penalty should simply be ensured, it is the law or that public safety is at stake.

Taking into consideration those preferring diversion and other approaches, respondents were asked to select, from a prompted list, what they would consider to be the most appropriate mechanism for holding him accountable. Just over half preferred diversion (53 per cent). Another 17 per cent believe the offender should face jail time and the same proportion (16 per cent) believe that he should receive probation. A further six per cent opted for house arrest while three per cent would prefer a conditional discharge. Results are again similar in the open link.

Respondents were then informed that the offender received the minimum sentence – six months in jail – and were asked whether they thought this sentence was appropriate. Results highlight considerable doubt as to the fairness of this sentence, with half (49 per cent) indicating the sentence was not appropriate and just over one-third (37 per cent) saying this sentence was appropriate. Slightly fewer respondents to the open link (29 per cent) feel this sentence is appropriate.

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[3] A non-English/French name (Ali) was used in a random selection of 25 per cent of cases, with no significant difference for most results, although the mandatory minimum sentence was slightly less apt to be considered fair when the scenario described an offender with an 'ethnic' sounding name.

Among the third who supported the prescribed mandatory minimum of six months or more, the primary reason provided by half was that it seems like the right sentence for such a serious offence. Another one in five or six said simply that "it's the law" and therefore is appropriate and the same proportion said that it holds the offender accountable (i.e., "teaches them a lesson") and is generally a sufficient deterrence and/or condemns the crime.

Among those who did not feel that the sentence was fair and appropriate, eight in ten (77 per cent) feel he should have received a sentence other than jail. One in seven (15 per cent) feel he should have received more time in prison and just four per cent feel a jail sentence is appropriate, but that he should have received less time. Slightly more (84 per cent) feel a different type of sentence would be appropriate among respondents to the open link.

Scenario Two

Tyler[4], 21 years old, is convicted of intentionally discharging a firearm while being reckless to the consequences. On a dare from friends, he shot at a secluded farmhouse. Tyler knew someone might be home but fired anyways. It turned out that no one was home at the time.

Tyler has no criminal record. He experienced physical and emotional abuse from a young age. He has brain damage (Fetal Alcohol Spectrum Disorder) as a result of his mother drinking alcohol during her pregnancy with him. One of the impacts of the brain damage is poor decision-making and a tendency to be easily influenced by others.

In the second scenario, the offender is described as suffering from Fetal Alcohol Spectrum Disorder and has a history of experiencing physical and emotional abuse, recklessly discharges a firearm. Public opinion is more clear-cut in this case, with seven in ten respondents (68 per cent) saying the case should be diverted out of the court system. One-quarter (26 per cent), meanwhile, believe that this offender should face trial. Results are very similar in the open link.

Among Canadians supporting diversion, the two key reasons offered were that jail would do more harm than good (i.e., a sentence in the community would be more productive) and that the FASD disability is a large mitigating factor requiring special consideration. Some also pointed to the first time offence or the minimal risk of reoffending. Among those believing the traditional system is better, they pointed to the seriousness of the offence and threat to public safety, the need for responsibility and accountability for the crime, or the fact that everyone is equal before the law.

Considering all respondents, two in three (68 per cent) prefer diversion, while 10 per cent believe he should face jail time and 10 per cent believe he should receive a probationary sentence. House arrest was considered most appropriate for five per cent and a further three per cent favour a conditional discharge. Similarly, in the open link 12 per cent feel that jail time would be appropriate.

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[4] A non-English/French name (Carlos) was used in a random selection of 25 per cent of cases, with no significant difference in results.

Respondents were subsequently told that the offender received the minimum sentence of four years in prison. A clear majority (70 per cent) do not believe this sentence to be fair; a result even more strongly reflected in the open link (80 per cent). Only one in five (22 per cent) feel that this sentence was the most appropriate course of action. Among those who did not feel that the sentence was fair and appropriate, more than eight in ten (83 per cent) feel that he should have received a sentence other than prison, reflected in the open link with even marginally stronger support (88 per cent). Just over one in ten (13 per cent), meanwhile, believe that while a prison sentence is appropriate, he should have received less time. Very few (two per cent) believe he should have received more time in prison.

Again, among those Canadians believe the sentence to be appropriate, the seriousness of the offence and threat to public safety is the key reason, although some said simply that 'it's the law". The need for a strong consequence to act as a deterrent was also provided.

Scenario Three

Sarah[5] is convicted of drug trafficking. She was caught selling some of her prescription opioid pills. When she was arrested, a knife was found in her backpack, which she claimed was for protection. She has a legitimate prescription for opioids due to chronic pain, but has been selling some of the pills to make money. Sarah is a 36 year-old mother of two, and is the sole provider for her family. Sarah has struggled with prescription drug abuse for some time.

Because Sarah was sent to jail and she had no family around to care for them, her kids were placed with child protective services at least until another arrangement could be made.

In this case, results indicate that two-thirds of Canadians (65 per cent) believe that the offender should have been diverted out of the court system, although three in ten (30 per cent) believe she should have stayed in the system to face trial. Support for diversion is even stronger in the open link (73 per cent).

Among those supporting diversion, the primary reason offered was that jail would do more harm than good (i.e., a sentence in the community would be more productive); offered by half. One in five said that it is the best solution for the children. About one in ten said that it is a first time offence and/or represents a minimum risk to the community (i.e., low risk of re-offending). Among those believing the traditional system is better, they pointed to the seriousness of the offence that "it's the law", and the need for sufficient penalty and deterrence.

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[5] A non-English/French name (Adhira) was used in a random selection of 25 per cent of cases, with no significant difference in results.

Across all respondents, more than six in ten (64 per cent) prefer diversion. Thirteen per cent believe that she should have been sent to jail, while 12 per cent opted for probation, and six per cent feel house arrest would be the most appropriate means of holding her accountable. The support for jail is the same in the open link (12 per cent).

Respondents were informed that the offender received the minimum sentence of one year. Again, results highlight doubt about the fairness of this sentence, with one-third (32 per cent) saying this sentence was appropriate. Almost six in ten (56 per cent), meanwhile, feel that there were more appropriate options, which is even more strongly believed among respondents in the open link (73 per cent).

Among those who believe that the sentence was not fair and appropriate, the vast majority (86 per cent) say she should have received a sentence other than prison. About one in twenty (six per cent) feel she should have received a longer prison sentence, while a similar proportion (four per cent) feel she should spend less time in prison. These results are even more strongly reflected in the open link with 93 per cent suggesting a different type of sentence.

Again, among those Canadians who believe the sentence to be appropriate, the seriousness of the offence is the key reason, although some said simply that 'it's the law". The need to be held accountable for one's actions and "be taught a lesson" as well as the need for condemnation of the crime and public deterrence was also provided.

2.8 ATTITUDES TO MANDATORY MINIMUM PENALTIES

Canadians believe that MMPs do not lead to fair and appropriate sentences. Results highlight the strength of public support for allowing judges the flexibility to consider an offender's personal and family circumstances in sentencing decisions. Fully eight in ten Canadians (81 per cent) believe that judges should be allowed to consider an offender's personal circumstances (such as mental health issues) in deciding on a less restrictive sentence, compared to just one in seven (15 per cent) who reject this notion. Similarly, three-quarters (72 per cent) believe that an offender's family circumstances (such as whether the offender is a sole breadwinner or caregiver) should carry weight in sentencing outcomes, although one in five (20 per cent) disagree. Results are very similar in the open link.

Canadians rated themselves as having low knowledge when it comes to MMPs in this country. Half of respondents (52 per cent) give themselves a low rating (i.e., 1, 2 or 3 out of 7) and another

28 per cent believe their knowledge is moderate (4). Fewer than one in five (18 per cent) rated their knowledge in this area as higher than moderate (i.e., 5, 6 or 7 on the scale). Knowledge is rated to be considerably higher of course in the open link, with 52 per cent rating their knowledge as high and fewer than one in four (23 per cent) giving themselves a low rating.

Results show only limited support for MMPs that would apply indiscriminately to all offenders convicted of the same offence. Just one in six Canadians (16 per cent) believe that such policies would be fair and appropriate, compared to eight in ten (77 per cent) who do not. Results are similar in the open link, although an even greater proportion do not believe MMPs are fair and appropriate (82 per cent).

Among those finding MMPs to be fair one in three argued for equal treatment of all offenders or a general "fairness" of treatment. The second most often offered explanation is the need for punishment to condemn the crime and/or ensure deterrence. A small proportion further suggests that offenders need to take responsibility for their actions. A smaller proportion still simply feels "it's the law". Among the majority believing MMPs to be unfair nine in ten uniformly argued that one size does not fit all and no one solution will work for all offenders or situations. A small proportion argued that the jail sentences put forwards as minimums are simply too severe and punitive in nature. A handful also see MMPs as political.

Results reveal that the large majority of Canadians feel that it is important that judges are allowed to impose sentences below – either less time in jail or a non-jail sentence – what the mandatory minimum would ordinarily require. Nearly eight in ten Canadians (79 per cent) accord considerable importance to a judge's ability to consider a sentence other than jail or prison in circumstances where it may be appropriate. The same proportion (78 per cent) believe it is important that judges are allowed to impose prison sentences below the mandatory minimum where the facts of the case suggest a lesser sentence may be appropriate. These results are again reflected in the open link.

2.9 PERCEIVED BENEFITS OF MANDATORY MINIMUM PENALTIES

Respondents were presented with two arguments – one contending that MMPs make sentencing fairer between socioeconomic classes and one contending that these sentences exacerbate income inequality – and asked which of the two they found to be more convincing. Most Canadians find the argument against MMPs more convincing and believable. By a margin of more than two-to-one, respondents opted for the position that MMPs increase the gap between rich and poor (59 per cent) over the argument that such politics improve fairness and equality (26 per cent). The gap found in the open link is slightly wider, with 21 per cent agree that MMPs improve fairness and equality, while 66 per cent believe it increases the gap. Among those arguing that MMPs increase fairness the central argument put forward by half is that sentences are consistent for all. A few (one in ten) talked about deterrence, ensuring a penalty and preventing leniency. Among those seeing MMPs as contributing to a gap between rich and poor, six in ten spoke of advantages of having the resources for effective legal representation. Another one in seven similarly spoke of the disadvantages of lacking financial resources.

Respondents were also presented with the competing arguments that MMPs ensure sentences are not too light and that MMPs may be too harsh and not always appropriate. This time by a margin of nearly three-to-one, Canadians lean to the position that guaranteed MMPs do not necessarily lead to fair and appropriate sentencing (69 per cent), rather than the position that these minimums ensure sentences are not too light (22 per cent). Results are largely the same in the open link with 75 per cent believing MMPs do not necessarily lead to fair and appropriate sentencing and 20 per cent who believe they guard against sentences that are too light.

Among those believing that MMPs guard against sentences that are too light, just over one in three said that it either ensures a penalty, acts as a deterrent or generally ensures accountability (roughly six per cent of all Canadians). One in four said that the simple fact of a predetermined sentence ensures consequences are not too light (about five per cent of Canadians overall). Another one in five said they eliminate discretion (fewer than five per cent of all Canadians). A few feel they ensure equal treatment in terms of financial access to representation and the system. Among those believing the argument that MMPs may impose sentences that are too harsh and generally not fair, most argued that it eliminates the discretion to consider the circumstances of each individual case (for six in ten respondents, or roughly forty per cent of all Canadians). Just under one in seven (or roughly 11 per cent of Canadians) said that incarceration is counterproductive, preferring diversion instead.

Respondents were asked about the perceived effectiveness of MMPs as a deterrent to committing crimes. By a margin of more than three-to-one, Canadians reject the argument that mandatory minimums act as a strong deterrent (67 per cent, compared to 23 per cent who see these policies as an effective deterrent). This opinion is even stronger among respondents of the open link (78 per cent).

Those who contend that MMPs act as an effective deterrent were told that past research has shown that harsh sentences do not act as a deterrent and that other programs – such as diversion – have proven more effective in reducing crime. Upon hearing this information, just over four in ten (44 per cent) said they subsequently found the argument for mandatory minimums as a deterrent to be less compelling. Nevertheless, a similar proportion (42 per cent) remain attached to the notion that these policies are effective in deterring crime. By and large, respondents in the open link were less convinced with only 27 per cent seeing this argument as influential in changing their position.

Respondents were then asked about the potential impact of MMPs on the pressure faced by courts and the time required to complete cases. Just over half (57 per cent) also believe that the use of mandatory minimums increases pressure on the courts, while just one in five (21 per cent) see these policies as alleviating pressure on the judicial system. One in five (22 per cent) offered no response. This view is even more widely held in the open link where 69 per cent of respondents believe there is increased pressure. Among Canadians believing MMPs decrease pressure on the courts many feel that efficiencies are realized and timelines shortened, largely because of the standardization of sentencing, and one in seven further said that it eliminates the deliberation process and removes discretion. Among those believing Canadians who feel that MMPs increase pressure on the system half said that there would still be delays and administrative burdens because due process is still required. One in four said that diversion is not an option so all cases remain within the court system.

Those who believe that mandatory minimums decrease pressure on the courts were told about research that has shown that mandatory minimums actually contribute to court delays. In response to this new information, four in ten (39 per cent) subsequently found the argument that mandatory minimums decrease relieves the pressure on courts to be less convincing. Nevertheless, a similar proportion (43 per cent) maintain that these policies reduce the burden on the courts. Results are similar, if marginally weaker in the open link (31 per cent).

Lastly, respondents were asked whether they believe that judges should be given the freedom to impose sentences lesser than the applicable mandatory minimums. Two-fifths of Canadians (39 per cent) believe that judges should be given the enhanced flexibility. Half (51 per cent) feel that judges should have this option, but only in exceptional circumstances. Fewer than one in ten (eight per cent) oppose granting judges the discretion to hand out lesser sentences. Results are again very similar in the open link although 57 per cent support complete discretion and 32 per cent advocate for this discretion only in exception circumstances.

3. SECOND SURVEY RESULTS

The second survey, did not provide as much information to educate respondents, however, some information was again provided in some questions. Overall, the survey briefly touched on reasonable candidates for diversion, but explored more extensively views about the value of restorative justice, for victims and for the accused, as well as the value of problem solving approaches to justice. Questions about Administration of Justice Offences were also included in the survey, along with views about the need for and value of performance indicators for the criminal justice system and levels of confidence in the criminal justice system with regard to fairness and access to justice for victims and for the accused.

3.1 CANDIDATES FOR DIVERSION

Survey results highlight the acceptance of Canadians for using diversion or other alternatives to the traditional justice process, when it comes to offenders accused of committing non-violent offences. There is little appetite, however, for extending the same options to those accused of violent crimes. The largest proportion (42 per cent) support the use of diversion for anyone accused of a non-violent crime, unless there are specifics of the case that do not warrant this option. Another three in ten would support diversion for those accused of non-violent crimes, but only for the first offence (i.e., not convicted of a previous offence). Only 13 per cent of Canadians would support diversion for all accused (including both cases of violent and non-violent crime). In contrast, almost as many (eight per cent) said they do not support the use of diversion under any circumstances, and another five per cent said they are unsure (possibly because it would depend on the case).

3.2 VIEWS ABOUT RESTORATIVE JUSTICE

In this survey, Canadians report limited familiarity with restorative justice. In fact, half (52 per cent) rated themselves with a one or two out of five (where one means not at all familiar and five means very familiar). Another three in ten feel they have a moderate familiarity. Only one in six of Canadians (14 per cent) feel they are familiar with this type of process (rating themselves with a 4 or 5 out of 5).

When asked about whether victims should be able to meet with their offenders to relate to them the impact of the crime, almost nine in ten (87 per cent) said that this make sense to them. Canadians are correspondingly positive about the ability of restorative justice to have a positive impact on the healing process of victims and families. Half of Canadians feel it is likely to result in a positive benefit for victims and families to heal and gain closure. Another third (35 per cent) feel that it is moderately likely to have a positive impact. Eleven per cent feel this is unlikely. Almost two in three (62 per cent) also feel that restorative justice would result in a more satisfying and meaningful process for victims than the mainstream justice process. Twelve 12 per cent believe that the traditional process would be more satisfying and 17 per cent believe that it would make no difference.

Canadians have a similar view about the impact of this process on offenders' opportunity to demonstrate accountability for their actions (45 per cent). Another one in three (35 per cent) said this would be moderately likely, and 15 per cent do not believe that restorative justice will result in better accountability for offenders.

Two in three (64 per cent) Canadians believe that restorative justice could be applied in all types of cases, provided it is voluntary on all sides. Some, however, had reservations; just over one in four (27 per cent) do not believe this should be the case and a further nine per cent are unsure.

3.3 SUPPORT FOR AND IMPACT OF PROBLEM SOLVING JUSTICE APPROACHES

Once problem solving justice was explained to respondents, over half of respondents (58 per cent) said that they see these as a method that should be promoted in Canada. Another 30 per cent indicated moderate support for the promotion of problem solving. Nine per cent said that they do not believe that this is an appropriate approach to crime.

Roughly the same proportion of Canadians (60 per cent) also believe that problem solving justice can adequately hold the accused to account for their crime. While 18 per cent said they do not see this method as holding people to sufficient account and 22 per cent were unsure, suggesting that the 30 per cent with moderate support for the promotion of problem solving justice is driven, at least in part, by lack of information.

The same results are reflected in views about the impact of problem solving justice on rates of reoffending. Four in ten (39 per cent) believe that this approach is likely to have a positive outcome in reducing reoffending compared with traditional methods such as incarceration. Another one in three (36 per cent) think it moderately likely. Just under one in five (18 per cent) do not believe that problem solving justice is likely to reduce the rate of reoffending. Canadians have a more positive view of this type of approach to crime on the outcomes for offenders, when compared with incarceration and other traditional responses. Half (49 per cent) see this method as more likely to result in a positive outcome. Three in ten (31 per cent) are more moderate in their view of the impact. One in seven (14 per cent) feel it is unlikely to result in greater benefit for offenders.

3.4 ADMINISTRATION OF JUSTICE OFFENCES

Following an explanation of Administration of Justice Offences (AOJO), respondents were asked whether they believe that breaches of conditions of release should be dealt with by laying a new criminal charge or dealt with in another way, outside of the courts. Over half of Canadians (55 per cent) believe that it would be better to deal with these offences outside of the traditional court process, while just over one-third (38 per cent) feel that the traditional route makes the most sense.

There is also strong support from Canadians to make these decisions on a case by case basis, taking individual circumstances into account (75 per cent). Only 19 per cent believe that there should be a more standardized response to all cases of breach of conditions. Virtually all considerations tested in the survey were given strong support. These include practical or unforeseen issues (e.g., poor work schedule or car breaking down as reason for not meeting curfew), addictions, mental health or cognitive issues, and intent or lack of intent to breach conditions (each supported by 79 to 81 per cent). The number of past breaches and risk to vulnerable people were also seen as important considerations among 74 per cent. The personal circumstances of the accused is also a compelling consideration for two in three (69 per cent).

3.5 PERFORMANCE INDICATORS FOR THE CRIMINAL JUSTICE SYSTEM

Almost nine in ten (88 per cent) Canadians are strongly supportive of the value of performance indicators for the criminal justice system to tell Canadians how well it is or is not performing. Only nine per cent hold a moderate view about the importance of this type of performance reporting and almost no one believes it is not important (one per cent).

Respondents were provided with 11 possible aspects of the criminal justice system that they may want to see included in any reporting on the performance, along with the option of specifying their own element of the system to be included in reporting. They were asked to select five that they are most interested in seeing performance reporting on, prioritizing these in a ranking from one to five.

Whether considering the top five or only top three, maintaining public safety is at the top of the list. This is followed by restoring relationships, holding offenders to account, helping victims meet their needs, and offenders to become rehabilitated. A fair system, as well as the effectiveness and efficiency in how the system operates are also considered important for some.

Table 3: Performance Indicators of Greatest Value to Public

Which five aspects of the criminal justice system's performance are you most interested in knowing about?

-	Selected as Top 5	Selected Top 3	1st	2nd	3rd	4th	5th
Maintain public safety by preventing and responding to crime	53%	35%	19%	8%	9%	8%	10%
Restore relationships between offenders and victims	49%	31%	9%	11%	11%	9%	8%
Hold offenders accountable for their actions	48%	31%	12%	11%	8%	8%	9%
Help victims and meet their needs	48%	30%	9%	11%	11%	10%	8%
Help offenders to rehabilitate and to reintegrate into their community	46%	30%	10%	10%	10%	10%	7%
Repair harm caused to the victims	44%	27%	9%	10%	9%	9%	8%
Provide a system that is fair to all	43%	25%	7%	9%	9%	9%	9%
Operate effectively (i.e., operate in a way that achieves its expected outcomes)	42%	23%	7%	7%	9%	10%	9%
Operate efficiently (i.e., operate in a way that uses resources to obtain an optimal level of outputs or outcomes; value for money)	43%	23%	7%	7%	9%	10%	10%
Maintaining Canadians' confidence and respect toward the system	41%	20%	7%	6%	7%	8%	12%
Provide a system that is accessible to all	41%	22%	5%	8%	9%	10%	9%

3.6 CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM

According to survey results, almost half of Canadians (45 per cent) exhibit limited confidence in terms of the system's accessibility to all victims of a criminal offence (providing a rating of 1 or 2 out of 5). Another third said they are moderately confident the system is accessible to all victims. Only 15 per cent believe the system is accessible to all, providing a rating of four or five out of five.

Confidence in the system's fairness to those accused and/or convicted of a criminal offence is only marginally higher. One-third (34 per cent) have limited confidence and about the same proportion (37 per cent) said they are moderately confident. Only one in four (24 per cent) believe the system to be fair to all who are accused and/or convicted. Results are similar with regard to accessibility with 26 per cent indicating low confidence, and 28 per cent indicating high confidence, leaving 39 per cent with moderate confidence.

Overall confidence is again, marginally higher, although as many indicated limited confidence (26 per cent) as exhibit confidence (27 per cent). In this case, almost half (45 per cent) said they are moderately confident. Among those indicating limited to moderate confidence, about two in three were able to point to some aspect of the criminal justice system that has helped to shape this point of view.

4. FOCUS GROUPS AND INTERVIEWS

4.1 RESTORATIVE JUSTICE

Focus group participants were provided a brief explanation of the restorative justice process and shown a short video[6] recreating a victim-offender mediation case where a violent offence had occurred. Most participants feel that restorative justice has the potential to be an effective way to repair harm caused by crime. Given the complex nature of restorative justice, many participants had questions about how the process works, including the length of the process, who initiates or signals that a restorative justice process may be appropriate, and the outcomes or "success rates" of the process as a whole. A few participants saw the approach as "too idealistic", and believed it to be unlikely that all parties would be satisfied or redeemed at the end of the process. Despite these concerns, most participants could envision potential benefits of the process to victims, offenders, and the community.

> "It opens dialogue that wouldn't have been there if this program didn't exist" (Halifax)
>
> "A prison sentence doesn't do much to repair the damage. Yes, you punish the action, but there is no real reparation. Restorative justice will help both sides understand the problem." (Montréal, translated)
>
> "I don't think [if I was a victim] I would be able to put aside my problems so easily." (Toronto)

Participants speculated that the process can help victims to gain information, understanding, and closure, as well as fulfil the need to "feel heard". These participants saw victim involvement as much more beneficial than a victim impact statement in court. The process could help create dialogue between the victim and offender to perhaps find commonality and understanding. A few said that the victim can help to understand the purpose of sentencing; that it is a consequence and not revenge. This victim engagement could help them feel less disenfranchised or harmed than if they are only part of the traditional court process. A few participants perceive that restorative justice can help the victim feel that they can have more control of the process and feel less like a victim. Further, it could help victims feel that "justice has been served" beyond the sentence.

> "The victim has the most to gain, closure, which is something that is so rare." (Edmonton)
>
> "The victim can carry the negativity of an offence for years. (thinking) 'Why me? Why me?' Well this might help them to understand a little better." (Interview)
> "Yes, there's the satisfaction that the person going to prison is being punished for their crime, but restorative justice goes further by helping to accept what happened or to forgive [the offender]." (Interview)

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[6] Collaborative Justice Program, 2015. https://www.youtube.com/watch?v=V50vhTg4BKo

> "If there's a chance for closure, I would [participate in restorative justice process] in a heartbeat. I would hate to think that 30 or 40 years from now I would still be bearing this resentment and hatred, it's a thing that eats at you and bogs you down everyday." (Edmonton)

Most focus group participants feel that, through a restorative justice process, offenders can understand the impact of their crime and put "a face" to the crime (even if not meeting face-to-face). Many participants perceived that restorative justice may be effective in reducing the likelihood of re-offending. Some participants believe the offender may be able to learn from the process, be afforded the opportunity to address some root causes of their offence (such as alcohol or anger issues) that would not be gained by a "punishment" approach of only serving jail time. A few participants were concerned that offenders would manipulate the process to try to gain a lighter sentence or that the process may not be as effective for repeat offenders.

> "I think it's a humane approach and we need more of that rather than locking someone up and throwing away the key. If you invest in people and allow them to confront their harm, the perpetrator has to face what they've done and the victim becomes humanized for them, they have to take responsibility for what they've done. I think there are a lot of positives." (Vancouver)

> "Each case is different. Yes, the offender may come to realize what they've done, but another may not care at all." (Interview)

Focus group participants were divided on whether restorative justice would be appropriate or effective for repeat offenders. Some said they feel that if an offender has been through the process before, they would not benefit from it an additional time as they were not affected by the experience the first time or they may use it only to obtain a lesser sentence. Others believe that those habitually offending may have the most to gain from a restorative justice process. Many participants felt that restorative justice would help reduce recidivism for first time offenders.

> "I think the important focus in this approach is eliminating re-offending, I don't think it should be framed as though the victims will get more support than through the court system." (Toronto)

> "I think that it would certainly cut down on the amount of repeat offenders if they actually learn what it (their crime) does to their victims." (Ottawa)

Some participants felt there could be a benefit of restorative justice to the community. The perceived benefit was described as helping society feel that measures are being taken to help offenders understand the impact of their crime and rehabilitate, rather than to simply "throw them in jail". Some likewise said that restorative justice is good for society as the process may help keep the public safe through reducing recidivism, and keeping citizens "healthy" through the healing process.

> "If you're really interested in protecting society, by helping an offender figure out what happened and why you have a much better chance at a successful progression and solution all around?" (Edmonton)

> "What does it say about us as a society, that we throw them in jail, in (poor conditions) and we don't try to rehabilitate them?" (Halifax)

> "If studies show the process reduces the amount of repeat offences, society wins." (Interview)

The voluntary aspect was pointed out as the critically important piece to guard against any situation where the victim may feel threatened or uncomfortable in the process. As noted, "if the victim doesn't want it, it can't happen". The voluntary aspect, according to many participants, also means that the individuals are willing participants and more open to the process and therefore more likely to benefit.

> "Victim's needs precede those of the offender." (Interview)

> "It is a voluntary thing so if it's not being forced on the offender or the victim, I really have no issue with it." (Toronto)

Flexibility was also noted as a necessary element of restorative justice. A flexible process allows for implementing appropriate conditions, depending on the circumstance. Some interaction between the victim and offender may be face-to-face through a facilitator; other interactions may be through a letter at the beginning or end of a court process. Although most participants said they feel that the process would be most beneficial if it occurs before sentencing takes place, the ability to start (or even discontinue) the restorative justice process at any point in time was considered an important attribute by most.

> "Each case is different. Yes, the offender may come to realize what they've done, but another may not care at all." (Interview)

Many focus group participants were not surprised that a restorative justice process could be used for violent crime, including the assault case provided in the example video. In fact, some participants said that violent crime may be the best use of restorative justice because it can help repair the emotional damage from "harsher" crime. In instances of violent crimes such as murder, participants said the family of the victim may benefit from a restorative justice process. However, some participants noted that restorative justice may be difficult in instances of pre-existing relationships (spouses, family) as there is greater interpersonal history and emotional connection, which could in some cases lead to potential collusion between parties. Likewise, some crimes such as child abuse or sexual assault were viewed by many participants as having victims for whom participation would be too emotional to be part of the restorative justice process.

> "I think the partner thing might be a little problematic because there's emotions involved between the two parties. So I can see that they could kind of collude and say 'Yeah I'm good, he's good now' and if the whole point is to get reduced sentences, I can see that being an issue. I'd prefer it probably if it was between strangers." (Toronto)

4.2 PROBLEM-SOLVING JUSTICE

Participants were introduced to the concept of problem-solving courts, where offenders are held accountable by participating in community-based programming and attending court on at least a weekly basis, and are usually not incarcerated if they comply with the conditions of the program. The rehabilitative focus of this approach, they were told, is aimed at dealing with the root causes of crime and conflict, ensuring the long term protection of Canadians through reduced rates of reoffending and acknowledging the high rates of vulnerable and marginalized persons caught up in the system. Focus group participants were very supportive of this approach within the criminal justice system. Most participants pointed to the potential of this integrated approach to help reduce rates of reoffending. Offenders with mental health issues, addiction issues, or even those who are unemployed, appear to participants to become caught up in the system. As noted by one, "Some offenders are more in need of help than punishment."

Most participants were supportive of a rehabilitative focus that can help those who are vulnerable or marginalized obtain assistance to address these issues. Some participants noted that for the program to be effective, specialists would need to be involved in the assessment and referral of an offender to determine the true root cause of their actions such as an addiction or mental health issue. A few participants said they feel that the cause and effect of an issue is not always obvious. For example, an offender may have stolen property to support a drug addiction. However, the addiction may be due to a lack of education, which led to unemployment or mental health issues such as depression.

> "In regards to mental health, I think this is great! There should be more of this going on." (Toronto)
>
> "The crimes being committed are a symptom, and if you only treat the symptom, it isn't addressing the root cause. If you're trying to deal with the root cause you are going to help people and prevent future crime. I don't see how that can be a bad thing." (Vancouver)
>
> "It's treating the cause and not the symptom, which seems difficult, but that's what you want to be doing." (Edmonton)
>
> "Deterrents don't really work to prevent crimes, people commit crimes for reasons other than what's stated in the law, people do things for reasons, and can we solve those reasons so people won't continue to commit crimes? Can you prevent crimes from even happening in the first place by addressing these root causes like poverty and drug abuse? Some things happen in a vacuum for no real reason, but some things do have systemic roots that need to be addressed." (Halifax)

Many participants saw problem-solving justice as most beneficial for first time offenders. Similarly stated, a few noted that dealing with root causes would be more effective if attempted before an individual progresses to the point of offending. Some participants of this view said they feel that after an offender obtains support or treatment, and then reoffends, they should not have another chance as they may be abusing the process. Conversely, a few supported problem-solving courts for repeat offenders, particularly where it is evident that mitigating factors lead to the repeated offences. Participants expressed the view that directing an offender through a problem-solving court can lead to better long-term results than if the individual was sent to prison. Likewise, a few said they feel that the victim of the offence may also feel reassurance from the problem solving court process that the offender would receive a greater chance of "healing" and not reoffend.

> "Sometimes the offender doesn't even realize they have a problem, so by allowing them to go to therapy, they can get help." (Interview)

> "One of the best things a society can do is better help those with mental health issues." (Toronto)

Many participants cautioned that, currently, rehabilitative supports are not extensively available, and that any expansion of problem solving courts would need to come with additional investment in the associated support programs. These participants stated that programs would need to be immediately accessible for individuals; however, most participants provided anecdotes of long wait lists for programs such as alcohol or drug treatment. While the idea of problem solving courts is strongly supported by participants, most reiterated that to be effective, program resources would need to be well coordinated, integrated, and dedicated to supporting rehabilitation efforts within the criminal justice system.

Focus group participants also noted a challenge insofar as programs need to be available locally for offenders, but had the impression of a lack of available supports in some areas, and particularly in rural communities. Further, the efficacy of programs was of concern for some participants. For example, some offenders may need repeated treatment for an addiction. Participants said they feel that treatment programs should follow best practices of duration or intervention to support offenders in the best chance of rehabilitation. Finally, some participants said that "some people just don't want to be helped" and will continue to have addiction and mental health issues despite repeated treatment until they are ready to take medication or adhere to a new lifestyle once out of the program.

> "The current system makes it so problem-solving courts are idealistic but unrealistic." (Montréal, translated)

> "These people are crying for help, but we have no resources – or limited resources – to help them." (Vancouver)

Despite these reservations, investment in support programs was viewed by many participants as a cost effective method of rehabilitation considering the cost of the courts and corrections for those who reoffend.

> "I don't see our justice system, with the incarceration of offenders, working that effectively. Whether as a taxpayer or not, it's extremely expensive to maintain someone in prison and not be able to show them how they can live outside, and have a significant life outside of that." (Interview)

4.3 ADMINISTRATION OF JUSTICE OFFENCES

Most participants were surprised by the statement introduced in the discussions that over one-quarter of all cases in criminal court are for Administration of Justice Offences (AOJOs). Participants inferred from the prevalence of AOJO cases in court that there are challenges for those released on bail, probation, or parole to meet the conditions set out in their release. A criminal charge for breach of conditions seemed unreasonable to many participants, particularly those actions that are not in itself a criminal offence (such as a curfew violation or arriving late to a court proceeding).

> "We're clearly doing something wrong in the first place if it's a quarter of the cases; that in itself indicates a problem." (Edmonton)

> "It may be a situation of releasing someone into the community who is in the exact same circumstance, mindset as when they were first convicted." (Vancouver)

> "The idea of it being a criminal offence for administrative justice I don't like. You're effectively saying what's against the law for you isn't for me, the law is different for you. I'm a fan of boundaries certainly, but to make it criminal for something that isn't criminal for me to do seems wrong." (Edmonton)

Most participants concurred that there need to be consequences to a violation of conditions; however, these could include a warning by a parole officer, review by a parole panel or case workers, or additional community service. Other methods of addressing a breach of conditions, according to a few participants, are creating a system of incentives (reduction of specific conditions or duration of conditions) or disincentives (addition of conditions) to following release orders. Some participants said they believe that those released on probation or parole may be involved with a "halfway house" that could deal with minor breaches of conditions. A few participants were concerned about criminal charges related to a breach of condition for individuals who have been released on bail (and not found guilty of an offence). For those released on bail, a breach of condition could lead to a criminal record, yet they may not be guilty and may not be convicted with their first offence.

> "The other thing that is of concern to me is that some of these people haven't even been convicted of a crime yet. Your freedom is limited but you haven't even been convicted." (Halifax)

Some participants expressed the view that it is reasonable to expect those released on bail, probation or parole to follow specific conditions, such as not drinking, staying away from certain parts of the community, or being home by a certain hour. These participants said they feel that conditions are simple to follow and if an individual breaks a condition, they are not ready to be integrated back to society. While some participants thought of conditions as a continued form of "punishment", others espoused the belief that conditions are meant to keep individuals away from factors mitigating their crime and "protect" them and the public. According to these participants, conditions should help individuals adapt into society and stay away from common problem areas such as alcohol or staying out late.

> "There have to be consequences for breaking these conditions or they would become essentially worthless. A lot of these conditions may be tied to the offence, or the offender's potential to re-offend." (Toronto)
>
> "When you're in jail your freedom is completely gone, here you're back in society with some conditions, if you can't follow that than you should go back to jail." (Toronto)
>
> "Offenders have been told 'don't do this or this will happen'. It shouldn't be that they go back to court and tell excuses." (Interview)

Most participants noted that conditions need to be reasonably linked to the crime. Most were particularly concerned about conditions that pose a barrier to integrating into society. These include, for example, curfews for those who find employment that involves shift work or restrictions on computer access for those seeking employment.

> "Nowadays people can wait 18 months for a trial and if you have a 10PM curfew you can't work if you have shift work. There are lots of jobs you can't take. So it does more harm than good. It actually puts people in situations where they are more like to reoffend." (Halifax)
>
> "Certain conditions make it difficult for offenders to reintegrate into society if they're not allowed to leave their homes." (Montréal, translated)

Most participants expected that conditions set out in a release should come with some form of support. This could include, for example, treatment for those with addiction issues who are ordered to not consume alcohol, or transit passes to those without transportation or employment and expected to attend parole meetings or court dates. Without support to meet conditions, particularly to those marginalized or vulnerable, the courts are "setting you up to fail".

> "Sometimes these curfews and administration of justice prevent the offender from maintaining a job, if they work shift work, or are trying to study." (Toronto)
>
> "If you're an addict or an alcoholic and you did not get treated and they let you free again, I think they didn't do their due diligence in the first place. They're letting you out, but setting you up to fail in my opinion." (Halifax)
>
> "I don't think people addicted to drugs can just stop because someone orders them. They need assistance, they need long term follow up." (Ottawa)

4.4 SENTENCING

In order to frame the sentencing discussion, participants were first asked if they thought that all offenders should receive the same sentence for the same charge. Two different cases were then described for the same charge of intentionally shooting a gun into a residence, where the intent, previous history, circumstances of the individuals and crime, and level of remorse were different between the two cases (see Appendix C for a full description of each scenario). Participants were asked again if it is appropriate to apply the same sentence. They also discussed the rationale or pros and cons for this in some detail. Mandatory minimum penalties (MMPs) were then described, including the implications for each of the two offenders in the example case and participants discussed their views of MMPs. In at least 10 of the 12 groups, most participants said that sentences should not be the same. In several of those groups, one or two participants argued that sentences should be the same, particularly where the crimes were serious. In two discussions, one in Montréal and one in Vancouver, there was a wider mix with about half saying that they feel that sentences should be the same for all persons convicted of the same offence. For these participants, ensuring that time is served and that there is consistency in judicial decisions are among the main reasons for supporting MMPs.

Across the groups, those who said that sentences should not necessarily be the same cited the wide variation in cases as the primary reason (i.e., sentences should be tailored to the individual circumstance of the case). They also emphasized the need for "judges to be judges" and have the discretion to make sentencing decisions based on a range of factors in each case. One participant argued that "'the same" doesn't necessarily translate into consistency (of sentences)".

> "When it comes to non-violent crime it's probably not fair, but for violent crime I think it should be the same sentence, even if it's the first time." (Toronto)

> "In terms of background, everyone has different upbringings I don't think that's an excuse for committing a crime." (Toronto)

> "Our judges have freedom to look at everything related to the case, not just 'you've been convicted of assault therefore two years have a nice day', its 'okay you've been convicted of assault, let's look at everything here' and that's where the key is to have good judges." (Ottawa)

> "All the circumstances are different and that's why we have the justice system that we have and I don't think there's any way to get around that. You can't sum up any two scenarios and say they are the exact same and deserve the exact same punishment." (Ottawa)

Among the 20 participants interviewed by telephone, a handful said that they believe sentences should be the same, while the majority argued they should not be. Even among the handful who argued for the same sentence, one stipulated that sentences should be the same "as long as the crimes are identical in all respects". One argued that the sentences should be the same because of the seriousness of the crime ("someone could have been killed"), emphasizing the need to "teach them a lesson, so that it does not happen again". Another spoke of standardizing the sentence, and another similarly talked about guarding against judges having "too much freedom". As with the majority of focus group participants, interview participants believing that sentences should not be the same argued that "not all cases are the same", and "there are too many factors to consider" to have the same mandatory sentences. One also explained that sentences need to be tailored (i.e., best fit) for each offender in order to minimize the risk of reoffending in each case as "It's an investment in future behaviour."

> "A sentence could be too light for one person and too heavy for another. It isn't fair". (Interview)

Key Considerations in Sentencing Decisions

In terms of considerations, many participants talked about the seriousness of the crime and level of harm done. The context of the crime and the offenders' intent to do harm (e.g., spontaneous or planned, presence and degree of provocation), as well as the degree of responsibility taken or remorse shown were other central themes. "It's the level of remorse that makes the difference." Previous history of offending and implied risk of reoffending was another set of considerations seen as important among many. "There should be less leniency with each new offence". The background of the offender, particularly in terms of the presence of any mental health or cognitive issues, poverty or addiction as a motivation for a crime were also argued as a central consideration. In these cases, participants often explained that a different type of sentence/treatment combination would be more effective than a traditional jail sentence. For a few, the age of the offender was raised as a consideration, with younger offenders warranting greater leniency as they may have greater potential for rehabilitation. The morals of the offender (i.e., how they generally treat others) and extent of support they have in the community (e.g., family or friends) were also cited by a few. Some also argued that other specifics of the crime, beyond severity and intent, may be relevant considerations in sentencing decisions. These included how the crime occurred, the type of victim, and the victim's perspective on sentencing.

> "Intent changes the nature of the crime." (Edmonton)

> "Things such as premeditation versus spontaneity of the attack, ... the context of the attack, whether there was provocation, the offenders' backgrounds, the lack of opportunities they've had. I think those things should be considered in sentencing even if dealing with otherwise identical cases." (Toronto)

Two Examples

In terms of the two examples presented (see Appendix C), all but a handful of participants said that Tyler and Peter should **not** be given the same sentence, arguing that the cases are very different. Most argued that showing remorse for their actions, intent (or lack of) to do harm are important differences that need to be taken into account. Previous history of criminal activity, as well as background of the offender were other key considerations pointed out in the two different cases. In particular, in Tyler's case, capacity for decision-making is a fundamental difference for most. Many participants argued that Fetal Alcohol Spectrum Disorder makes it a very different type of case that should be treated differently. Some said that Tyler does not have the same capacity to make decisions and therefore does not bear the same responsibility. Many also said that Tyler's needs are very different so any sentence needs to help him/teach him to make better decisions. For most, jail was not the solution for Tyler. "(He) doesn't even belong in the same court" argued one focus group participant in Halifax.

> "In that kind of case, putting him in jail might not be the best way to do it. Therapy might be the best way to keep this from happening again." (Interview)

> "Standard sentence" is not appropriate for someone who is remorseful and has other (better) treatment options for mental health cognitive functioning etc." (Interview)

> "Fetal alcohol spectrum disorder really messes people up, he wouldn't be operating at the same level. (He) doesn't have the same capacity to make decisions and weigh options and consequences" (Edmonton)

> "I think it's pretty obvious Tyler does not have the mental capacity to make that judgement call, I mean I'd go after the guy who influenced him, if you could. Plus he's remorseful and it's a medical condition." (Ottawa)

Generally, response to Tyler's case was more uniform than the reaction to Peter's case where response was more varied. For some, the involvement of gang violence and description of a history of violence were strong factors to consider and as a result many said that a stricter sentence makes more sense for Peter. On the other hand, some also argued that individual consideration is also required to help Peter change his pattern of behaviour. Some advocated for support to give him new connections, break his connections to gang-life and show him a better way, including making the investment in teaching him new life skills. Many also reacted to the poverty in Peter's background arguing that he is also disadvantaged. "These are society's problems and we can't just lock them away" said one participant. Several argued that jail would simply teach Peter to be a "better criminal" and solidify his gang connections, further cementing his growing pattern of criminal behaviour.

> "For the second case (Peter) it should have been recognized that he was calling out for attention or help, trying to be a part of something because he must feel terribly alone. I think those things can be identified beforehand." (Interview)

> "... my first reaction was he knew what he was doing, it's gang related, and that makes me bristle. But then I got thinking, is sentencing him and sending him off to prison going to solve this?" (Interview)

> "Putting him in jail with a bunch of hardened criminals will make him one." (Interview)

Many argued that safety of society is paramount. For a few, this was argued in terms of locking offenders away in order to protect society, but for many the sentence was seen as an "opportunity"; a chance to give the individual the assistance and support they need to change their behaviour. This reduced risk of future reoffending was often seen as the best chance to keep society safe.

> "There are always consequences for what you do. They are lucky that someone was not in (the places shot at, described in the examples. It would have been a lot worse." "Next time someone could be hurt or killed. Best to teach them a lesson that they will pay attention to now so they won't do it again in the future." "....even mental health can't be an excuse for someone not to have consequences or be taught a lesson." (Interview)

> "Basically these guys have committed a crime with certain elements, which requires certain insurance for public safety." (Ottawa)

> "We send people jail but what do we do for them once they're there? Are we educating them? Are we giving them a trade? It's such a good opportunity to train somebody in a field that they can then use when they get out of prison." (Halifax)

Concerns and Rationale Expressed

Although most argued that sentences should not be the same, many talked about the need for sentencing guidelines or suggested ranges to help judges maintain consistency. Some also spoke of the need to review judges' sentencing decisions from time to time, particularly in cases where sentences seem unexpected given the specifics of a case. For a few, this was suggested in the form of a written rationale required by a judge when a sentence seems "out of the norm" given the specific details of a case. For others, a peer review system was advocated, involving a small panel of judges used to review cases on occasion, or systematically to evaluate performance (i.e., review of a random selection of cases). Participants noted the need for "checks and balances" in place to ensure that judges' performance is generally monitored, given the discretion that most believed is necessary in their job. One participant compared it with reviews of referee calls that are a routine part of public discourse in professional sports.

> "You need both, mandatory sentences and judicial discretion. I would suggest that in cases where judges think less than the mandatory should be applied, it should be reviewed by 3 other judges, or a panel of judges, so it kind of meets a middle ground." (Toronto)

> "I don't think you can leave judges out there on their own trying to decide. I know in other countries they have sentencing guidelines that they have in places like the U.K. and other countries where the research is done and social policy framework is put in place where judges have sentencing guidelines to any given offence and they have this broad range they can choose from within those guidelines. And those guidelines have hopefully *knock on wood* been created with the right amount of research and thinking behind them." (Toronto)

One participant expressed a related concern for the homogeneity of judges' backgrounds as judges, given their impression that judges are not representative of the offender population, and therefore bring narrower life experience to decision-making. A few also suggested that some judges (and lawyers) generally bring their own biases to the job when making sentencing decisions.

> "I know sometimes, with some of the lawyers, they will try to get their cases heard by certain judges because they know some judges are more lenient than others and so I think there has to be some training for the judges to say 'this case needs this type of response versus this case needs this type of response.' You can take two seemingly similar judges, and one is going to throw the book at someone, the other person is going to let them off, even with the same crime." (Ottawa)

> "I do worry if there is not some kind of boundaries (on judges). Do the courts really represent everyone in society? They probably don't really represent most of the people who come through the courts (i.e., judges from all segments, not just older, white males). So is it really judgement that represents all of society." Is it fair or are people being marginalized by our system (by colour of skin, social and economic status)?" (Halifax)

The emphasis in many of the discussions and interviews was that the best evidence about sentencing outcomes and recidivism should be available to judges to ensure that sentencing decisions are logical and in the best interests of public, keeping reduced reoffending and prevention as the central objective. Many expressed doubt that jail is the best solution in many, if not most, cases. Some described this as a waste of money, making situations worse rather than better. Some concerns were correspondingly raised about whether or not the system is adequately resourced to obtain the best outcomes for offenders, and to give judges the best options of programs for offenders.

> "Sentences need to make sense – not to have them honed into better criminals in prisons, but encourage them to make better decisions" (Interview)
>
> "They need the support and the time of people around them who are going to be aware of how they're coping and dealing with this and learning from this experience to better their own lives." (Interview)
>
> "What happens if you steal to feed your starving kids? Are you in fact a criminal? In 17th or 18th century Britain or Holland it didn't matter. I think we live in a society now where it does matter, and I believe a judge wouldn't rule the same way..." (Halifax)
>
> "Why do we lock people up for trying to take care of their basic needs?" (Halifax)
>
> "Judges should be able to say that like you're not going to jail but you're going to be in a court ordered treatment program and know that the person is actually going to be able to get into the treatment program in a timely fashion and then be properly supported when they get out of it and they'll actually have access to public housing if they can't afford it. All of those systems need to be in place..." (Halifax)

Another area of concern related to the expertise of judges. Several participants in groups or interviews raised concern about judges having to be experts in a wide range of areas ("they almost have to be social workers too"). Several argued that judges have to assess each situation, recognizing mitigating factors in the offender's background, and therefore they need to have access to good information about various segments of society (e.g., people with FASD) and what works best for each. A few participants suggested that judges undergo periodic training on factors such as cultural issues to avoid becoming "set in their ways" or generally lacking in perspective and understanding on current issues. Others suggested that judges have access to a network of experts in the community for advice on best solutions.

> "Judges need to be educated on these matters and rule with marginalized segments' needs in mind." (Halifax)
>
> "We know people are sentenced on things that have nothing to do with the crime, but perceptions and biases. Judges need to be educated and regularly reviewed on latest understanding of what works (evidence), biases, and that lawyers are also trained and mindful of these things. (Halifax)

For many, there was a need to stipulate that although sentences should not be the same, that this does not translate to 'no sentence at all'. A few participants wanted to be sure that the point was made that crimes were committed, and responsibility and accountability are an important and necessary part of the equation; that some form of sentence is required, albeit tailored to the individual circumstances.

> "I believe in both cases there should be accountability and responsibility. The degrees may be different, the approach may be different but there still have to be accountability and responsibility, an accepted understanding of where they went wrong." (Interview)

> "A crime is a crime. Tyler's case should still go through the court system, but if a doctor can demonstrated he has a health-related issue, maybe he should go through a different kind of system." (Interview)

Mandatory Minimum Penalties

Most participants argued against the idea of MMPs, preferring that cases be reviewed on their own merit. Flexibility for judges to make sentencing decisions based on specific cases was argued as the rationale much of the time.

> "Mandatory minimums are absolutely absurd and offensive, let's let judges use their judgement. You cannot look at all the circumstances and context (in MMPs)." (Edmonton)

> "We put our trust in judges, they don't need to have a blanket policy of minimums, they are thinking, intelligent beings who should be able to make an informed decision based on the factors of the case. I would say take away minimums and sentence according to the details." (Vancouver)

> "I think it undermines the ability of a judge to have say and be a judge if you're following an arbitrary law put into place for political reasons." (Halifax)

> "There are too many different situations/circumstance and consequences need to be varied to fit that, including based on harm, intent, responsibility. (Interview)

> "The mandatory minimum reduces an individual to one stream of the law and they must go through it. That obviously is flawed because it doesn't take into account the intensity of the breaking the law- It's not effective, it defeats the purpose of justice." (Halifax)

> "In theory mandatory minimums would make it more fair, but in practice they create an arbitrary standard for the punishment of a crime. That doesn't necessarily work in our justice system. If the justice system is doing its job we shouldn't need them (MMS), there are other ways to make judges accountable." (Toronto)

In terms of arguments for and against the use of MMPs, many argued that MMPs do nothing to deter crime, suggesting that many potential offenders are not aware of the minimums and do not weigh these things out in advance. Among those supporting the idea of MMPs, only a few said they believe it deters crime as it shows firm consequences to a crime as some offenders might otherwise believe they can "get off" due to compassion or a technicality. In terms of the argument of consistency in sentencing, many who criticize MMPs question the value of consistency, arguing that all cases are different, and different offenders likely require different types of sentences to assist them on a different path in the future ("the same sentence does not mean the same fairness or appropriateness"). Some participants also said that it does not result in equality for the same reason. A few, however, of those who support MMPs argued that such sentences guard against leniency and promote greater consistency. Similarly, a few also said that MMPs promote greater fairness. A few others argued that MMPs are a good idea because "they are mandatory; it's the rule" and "you do the crime, you do the time".

"(MMPs) are not deterring anything. Look at the population in the jails." (Interview)

"If someone is going to commit murder, knowing they'll do 15 years won't change anything." (Montréal, translated)

"No one commits a crime thinking they are going to get caught (thinking) 'Oh God I have to worry about this sentence I could possibly get.' Everyone commits crimes thinking they're going to get away with it, that they're going to benefit from it… laws don't deter anyone or prevent crime any more than insurance prevents car accidents." (Halifax)

"Fair is not equal". "(The) same sentence is to really what is helpful for offenders who are all different." (Interview)

"If we remove mandatory minimums from certain crimes, it opens the door to allow for judges to give unreasonably low sentences." (Vancouver)

One of the foundations of our legal system is precedent, so they're not completely unbound. Even if we say full judicial discretion, that's also taking into consideration precedents and there is so much case law." (Vancouver)

"I think it's a fact that mandatory minimum sentencing affects aboriginal people more than (others)." (Winnipeg)

"You don't get equality from mandatory minimums because it won't be equal, the crimes aren't equal. We know they don't equalize people." (Edmonton)

Overall, among those most opposed to MMPs, arguments largely centred on the need for flexibility to make the best decisions about sentences. Many saw MMPs as an oversimplified solution to a more complex problem.

"We must keep the whole of society working and punishment of punishment's sake is not working". (Interview)

"It (MMP) doesn't really solve the problem and that's what the justice system is supposed to be there for; it's supposed to take care of the issue, not sweep it under the carpet for four years." (Halifax)

" (It) doesn't help society either because you have a whole bunch of people in jail who are not getting better. That cost a lot of money, whereas you could have thought about some better consequence that actually make a positive change. Need to be more thoughtful about consequence for that person." (Interview)

"Mandatory Minimums are purely political/PR driven to serve the 'tough on crime' agenda, and I think a lot of people do buy that and it does comfort them. But I think there's a significant portion of the Canadian voters who would want to feel like something's being done." (Edmonton)

4.5 PERFORMANCE INDICATORS

When asked about information about how well the justice system is working, most participants declared interest in information about rates of recidivism. This includes evidence collected on rates of re-offending by offender segment/demographic, by type of crime, and general classification of situation (e.g., intent, responsibility and history of previous crime). Many also asked about rates of re-offending with traditional use of courts and jail versus alternative approaches and types of sentences (e.g., with use of community-based programs, supports and rehabilitative programs). Some participants also indicated interest in reporting on the rates of using alternative approaches, supports and programs (e.g., in jail, and community-based programming). These were seen as good indicators of level of access, and usage, as well as providing a profile of who the alternatives and programs are provided to (type of offence and type of offender), and which approaches have the best outcomes. Some also expressed interest in reporting on the specific types of rehabilitative or support programs available in jail (e.g. to provide education or skills training, to provide support for mental health issues), and information regarding their overall effectiveness and rate of success.

> "The idea of justice is to decrease offences. If that's going down, the system is working. If it's not, we need to address something" (Toronto)

> "The social services person goes to court and says 'Yes they've been to every single thing; every educational program, counselling program, they've met with me every time, they were on time. They did everything that they were asked to do. But nobody knows did they actually accomplish anything in any of those programs? That is never acknowledged or talked about." (Interview)

> "I'd like to call into question why the mandatory minimum is even there. What is it trying to achieve? Does it even achieve that goal? Because they talk about 'it's supposed to prevent crime' but is there any evidence that it actually prevents crime?" (Interview)

> "If there was a great deal of success going on through community outreach or a sentencing cycle or mental health or addiction treatment program and reducing re-offenders, yeah we should be hearing about it and we should be celebrating successes." (Interview)

> "How many people re-offended? How many people are completing their consequences and going on to live healthy lives in the community?" (Interview)

> "I would really like to see more outcomes based evidence than statistical numbers and percentages. So looking at things like incarceration or participation in programming while incarcerated or diversion or community based programming and then find some new measures to look at. Cause there are things that are already documented as predictors of being less criminally involved like self confidence or social engagement and to look at those types of changes over time as a result of any of these programs." (Edmonton)

> "What is being done to address root causes? Do we have more social workers? Do we have more hospital beds?" (Toronto)

Costs related to the system, and a breakdown of costs in different areas were also seen as important for many participants, including information about cost effectiveness. This includes a detailed breakdown of cost and resources associated with each step of the criminal justice process (police, courts, jail, rehabilitation and other diversion programs). It was noted by a few participants that a benchmark reference to other justice systems (inter-provincial or international) could be helpful as a comparison for cost analysis.

> "It's cost versus success. If it proves to be truly restorative and the economics make sense, great, it's a great approach." (Ottawa)

> "If Scandinavian countries are getting lower recidivism rates, we should be following that rather than what we're doing." (Winnipeg)

Other types of indicators were noted less frequently. A few people raised the idea of describing judges' experience and qualifications to do the work they do, as well as a general review of performance (accuracy, overturned decisions, wrongful convictions, consistently too light/too harsh sentences). Accuracy of police was also raised, including unsolved crimes and quality of evidence provided to lawyers. Similarly, a few spoke more broadly of general deficiencies or "failures" in the system, such as wrongful convictions, cases thrown out because of delays, and deaths in custody. A few participants expressed interest in reporting on court delays and average wait times for trials. One group also emphasized the importance of reporting on reasons for the delays (e.g. not enough judges, too few hours of court operation, lawyers delaying cases) in order to make appropriate recommendations for improvement of access.

> "The problem isn't with sentencing – it's with the administration of the criminal justice system, the process, and the time it takes." (Montréal, translated)

> "I'd like to know what kind of plea bargains they're making. I'd really like to see what kind of deals they're making. Like 'I'm not going to bust you for robbery, but I am going to bust you for damage to property.' I'd also like to see how often certain judges get swapped out for other judges by defence lawyers." (Ottawa)

> "I think there are some obvious failures that we should measure from the point of view of the police: unwarranted arrests, arrests that had no purpose, clearly wrong, bias, whatever you want to call it. I would want to see statistics on the police." (Vancouver)

> "Length of time waiting for trial, time it takes to go through the trial, possibly broken down by what the offences are." (Vancouver)

Victim input and satisfaction with the process and engagement were also raised by a few participants as valuable indicators of performance, along with use of external expertise within the criminal justice system.

> "How satisfied or dissatisfied the victims are; if the victims feel it's been dealt with appropriately." (Vancouver)

APPENDIX A
METHODOLOGY

APPENDIX A: METHODOLOGY

Online Survey Methodology

In both the first and second survey components, respondents were randomly sampled from EKOS' in-house panel (Prob*it*[7]). Each survey was designed to be self-administered online. This method was considered the most appropriate because it affords better opportunity to consider the questions and full response options visually (i.e., full sets of questions and lists of responses). It also gives respondents a chance to work at their own pace and exerts less pressure to respond in a socially desirable way because there is no interviewer present in the equation.

Prob*it* offers complete coverage of the Canadian population (i.e., Internet, phone, cell phone), random recruitment (i.e., all respondents to our panel are recruited by telephone using random digit dialling (RDD) where the last digits in the listed telephone number are randomly changed and are confirmed by live interviewers – they do not opt themselves into our panel), and equal probability sampling (which means that results are generalizable to the broader population). The panel also includes cell-phone-only households, as well as those who are not connected to the Internet.

Initially, each sample was randomly drawn among panel members who typically complete surveys online or by telephone. Those who typically complete the survey by telephone were contacted and invited to complete the survey online, by providing an email address, or through a paper copy mailed to their home. While roughly 15 per cent of the sample was approached by telephone, all respondents elected to receive an email invitation with a link to the online survey. Following are details of each survey:

- First, information choice survey - a total of 1,474 panel members were contacted by phone to participate in the survey. Of these, 388 agreed to participate, electing to receive an email invitation to participate, and 169 actually completed the survey online. In the online sample, 14,013 invitations were sent. The overall response rate for the final sample of 2,109 across online and phone sample is 17 per cent[8]. An open link was also circulated by Justice Canada, although the results are not the focus of this report.

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[7] Prob*it* offers complete coverage of the Canadian population (i.e., Internet, phone, cell phone), random recruitment (i.e., all respondents to our panel are recruited by telephone using RDD and are confirmed by live interviewers – they do not opt themselves into our panel), and equal probability sampling (which means that results are generalizable to the broader population).

[8] Based on Market Research and Intelligence Associate's (MRIA) response rate calculation of number completed out of valid sample, excluding cases with invalid phone number (phone recruited sample) and those returned to sender (mail out) or bounced (email).

- Second, public opinion survey - a total of 2,259 panel members were contacted by phone to participate in the survey. Of these, 239 agreed to participate, electing to receive an email invitation to participate, and 102 actually completed the survey online. In the online sample, 15,022 valid invitations were sent. The overall response rate for the final sample of 2,027 across online and phone sample is 16 per cent[9].

First Survey

In the **first survey**, the questionnaire was pretested with 75 interviews completed in English (59) or French (16). Of the 75 test cases collected during testing, data from 42, collected in the second of the two rounds of testing were included in the analysis.

Participants completed the self-administered questionnaire (available in either official language) between August 4 and 18 2017. The survey collection was completed on August 18, 2017, The questions took an average of 31 minutes to complete. From the initial email sample of 14,013, 1,614 were found to be invalid. Of the remaining 13,773, 267 were screened out as ineligible, for a response rate of 16.6 per cent. The total sample of 2,019 includes 169 completed by telephone while the rest were completed online. From the initial telephone sample of 1,474, 115 were found invalid, for a remaining functional sample of 1,359, used to obtain the 169 completed interviews, along with 52 found to be ineligible, and 137 who refused. The complete English questionnaire may be found in Appendix D. Because of its length respondents were offered an incentive of $15 to complete the questionnaire.

As is standard EKOS practice, a minimum of eight call-backs (nine total calls) were made during the recruitment of the portion reached by phone before retiring a case and substituting another household. Follow-up calls were made on subsequent days, at varying time periods to maximize the potential for reaching a given respondent. As is typical in a Prob*it* survey, all other sample members, typically reached online, were recruited through an email invitation to participate. Up to three reminders were sent to non-respondents.

This sample size yields a level of precision of ±2.2% at a 95 per cent confidence interval for the sample overall and ±3% to 6% for most sub-groups that could be isolated in the analysis (including age and gender). Survey results were weighted by age, gender, region, and education. Results can be extrapolated to the broader population of Canadians. Open ended responses were reviewed and coded by the Department of Justice and returned to EKOS to be merged in with the broader survey responses based on an anonymous case ID. Banner tables were created to explore results by key characteristics (e.g., region, age, gender, education, and income).

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[9] Based on Market Research and Intelligence Associate's (MRIA) response rate calculation of number completed out of valid sample, excluding cases with invalid phone number (phone recruited sample) and those returned to sender (mail out) or bounced (email).

In the three sentencing scenarios presented the name was changed in 25 per cent of cases to one that may be considered more ethnically representative. Results for the 75 per cent of cases displaying David, Tyler and Sarah were compared with results for the 25 per cent of cases where Ali, Carlos or Adhira were displayed. Results were reported where there were significant differences.

Parallel Open Link (First Survey)

The survey was also made available in an open link announced on the Department of Justice website and in communications and advertising circulated through social media. In the first component, the open consultation was completed by 3,486 individuals who accessed the link online between August 15 and 25, 2017 although only 1,750 responses were initially intended. Given that the respondents were self-selected and therefore do not comprise a random sample, the survey is not considered to be representative of the Canadian population and no margin of error can be applied to the results, nor was any weighting applied to the data. Verbatim (open end) responses for the open link survey were also reviewed internally by the Department.

This open survey was expected to include a stronger representation of invested members of the public, as well as professionals working in criminal justice issues. Results are not, therefore, the focus of this report, although briefly described in Chapter 2. Sample characteristics for the open link sample can be found at the end of this appendix.

Second Survey

In the **second survey** 66 interviews were also completed in the pretest (56 in English and 10 in French) of the questionnaire, of which the final 35 were included in the analysis. The self-administered survey was collected between October 19 and November 3, 2017. The survey required an average of 18 minutes to complete.

Of the completed sample of 2,027, 108 were completed by telephone, and 1,919 were completed online. A total of 14,584 were invited by email, although 742 were found invalid, for a remaining functional sample of 13,842. Of these 1919 were completed and 355 were found to be ineligible to participate. A total of 2,919 were attempted by telephone, with 237 found to be invalid for a remaining functional sample of 2,682. Of these, 76 were found to be ineligible to participate in completing the 108 interviews (along with 304 who refused). The overall response rate for the combined samples is 15.5 per cent. Up to eight call backs were made to non-respondents on the telephone, and two reminder emails were sent to online non-respondents. No incentive was offered in the second survey. The questionnaire can be found in Appendix E.

The sample of 2,027 also carries with it a margin of error of up to ±2.2% at a 95 per cent confidence interval for the sample overall, and ±3% to 6% for most sub-groups that could be isolated in the analysis (including age and gender). Survey results were weighted by age, gender, region, and education, and results are considered to be projectable to the broader population of Canadians. Similar data tables were created in the second survey to explore results by key characteristics (e.g., region, age, gender, education, and income).

Focus Group and Interview Methodology

In order to add further context and understanding to the survey results, 12 focus groups were held in seven Canadian cities (two groups in each of Halifax, Montréal, Toronto, Vancouver, Edmonton and one in each of Winnipeg and Ottawa). Participants were recruited from the Prob*it* panel (recruitment screener can be found in Appendix B). Groups were stratified to ensure a balance of men and women and representation of a variety of adult age cohorts. A focus group guide (provided in Appendix C) was developed by EKOS in consultation with the client. Discussions centred on a number of issues common to the survey. Groups were held in English with the exception of the two focus groups in Montréal, held in French.

Each focus group was 90 minutes in duration. Groups were held in professional focus group facilities. Refreshments were provided and participants were provided $85 for their attendance. Participants were told of any observers, and about confidentiality of responses, as well as asked for their consent regarding audio and video recordings.

In addition to the focus groups, 20 individual interviews were conducted by telephone with residents of rural and remote communities, using the Probit panel as the sample source. Fifteen were conducted in English and five in French. Four were conducted with residents of the territories, and four were conducted with Aboriginal participants. The focus group guide formed the basis for the questions used in the interviews, but without the additional sub-bullet prompts used in the larger discussions. The average interview length was 35 to 40 minutes and participants were provided with an incentive of $45 for their participation.

Video and/or audio recordings, researchers' notes and observations from the focus groups formed the basis for analysis and reporting of results. Results are not considered to be representative and projectable to the general public and should be considered directional in nature only. Results of the qualitative phase are reported together.

Table 4: Sample Characteristics of Parallel Open Link Sample (First Survey)

Table 4a: Province

-	Open Survey
Total number of cases	*3,460*
British Columbia	18%
Alberta	18%
Manitoba and Saskatchewan	8%
Ontario	40%
Quebec	6%
Atlantic	8%
No response	0%

Table 4b: Type of community

-	Open Survey
Total number of cases	*3,460*
Urban	82%
Rural	14%
Remote	1%

Table 4c: Gender

-	Open Survey
Total number of cases	*3,460*
Male	38%
Female	56%

Table 4d: Age

-	Open Survey
Total number of cases	*3,460*
<25	4%
25-34	22%
35-44	20%
45-54	18%
55-64	18%
65+	12%
No response	5%

Table 4e: Education

-	Open Survey
Total number of cases	*,3,460*
Elementary school or less	1%
Secondary school	5%
Some post-secondary	7%
College, vocational or trade school	17%
Undergraduate university program	28%
Graduate or professional university program	39%
No response	3%

Table 4f: Household Income

-	Open Survey
Total number of cases	*3,460*
Under $20,000	4%
$20,000 to just under $40,000	7%
$40,000 to just under $60,000	10%
$60,000 to just under $80,000	12%
$80,000 to just under $100,000	12%
$100,000 to just under $120,000	11%
$120,000 to just under $150,000	10%
$150,000 and above	20%
No response	15%

Table 4g: Employment

-	Open Survey
Total number of cases	*3,460*
Working full-time (35 or more hours per week)	56%
Working part-time (less than 35 hours per week)	5%
Self-employed	10%
Student attending full time school (not working)	4%
Unemployed, but looking for work	1%
Not in the workforce	4%
Retired	13%
Other	2%
No response	5%

Table 4h: Born in Canada

-	Open Survey
Total number of cases	*3,460*
Yes	88%
No	11%
No response	1%

Table 4i: Minority groups

-	Open Survey
Total number of cases	*3,460*
A person with a disability	9%
A member of a visible minority	8%
An Aboriginal person	5%
None of the above	69%
No response	11%

Table 4j: Have you ever been involved in the criminal justice system?

-	Open Survey
n=	*3,460*
Know someone as victim/accused	22%
Testifying as a witness in criminal court	14%
As a family member of an accused/convicted person	11%
As the victim/survivor of a non-violent crime	12%
After being charged/convicted of a crime	9%
As a family member of a victim/survivor	11%
As the victim/survivor of a violent crime	7%
By working in the criminal justice system/Working in a related field	6%
Jury member chosen to participate in a criminal trial	6%
Volunteering in the criminal justice or related area	4%
Other	5%
I have not been involved in the CJS before	44%
Prefer not to answer	4%

APPENDIX B
FOCUS GROUP RECRUITMENT SCRIPT

APPENDIX B: Focus Group Recruitment Script

INTRO

Hello, my name is ________________ from EKOS Research. We are conducting a study on behalf of the Government of Canada. This involves a series of group discussions with Canadians who are 18 years of age or older on the topic of the criminal justice system and we think that you'll find the topic interesting.

Your participation in the research is completely voluntary and confidential, and your decision to participate or not will not affect any dealings that you may have with EKOS Research or the Government of Canada. The sessions will be audio and video recorded for research purposes, and representatives from the Government of Canada may also be observing. The information is being collected under the authority of the Privacy Act and other applicable privacy laws. The full names of participants will not be provided to the government or any other third party. Also, the results from the discussions will be grouped together in a report, which will contain non-identifying information. May I continue? **(If "no", thank and terminate)**

The session will last an hour and 45 minutes. As a token of our appreciation a cash gift of $85 will be given for your participation. May we have your permission to ask you some further questions to see if you fit in our study?

If "no", thank and terminate

Yes	1
No	2

QGENDR

Record gender of respondent (DO NOT ASK)

Male	1
Female	2

QAGEX

May I have your year of birth, please?

INTERVIEWER NOTE: Must be 18+; If born in 2000 or later, thank and terminate

RECORD YEAR :	77
REFUSED	99

QAGEY

Hesitant

Would you be willing to tell me in which of the following age categories you belong?

Under 18 years	1
18 – 34 years	2
35 – 54 years	3
55+ years	4
REFUSED	9

Q2

Are you or is any member of your household or immediate family employed in:

Q2A

Government of Canada

Yes	1
No	2

Q2B

An advertising agency

Yes	1
No	2

Q2C

A market research company

Yes	1
No	2

Q2D

The media (Print, Radio, TV, Internet)

Yes	1
No	2

Q2E

Justice issues (e.g. courts of law, correctional services, advocacy organizations)

Yes	1
No	2

Q3

Participants in group discussions are asked to voice their opinions and thoughts, how comfortable are you, in voicing your opinions in front of others, in English. Are you...

Very Comfortable	1
Comfortable	2
Fairly Comfortable	3
Not Very Comfortable (Thank and terminate)	4
Very Uncomfortable (Thank and terminate)	5

Q4

Have you ever attended a focus group or one to one discussion for which you have received a sum of money?

Yes	1
No	2

Q5

When did you last attend one of these discussions that was sponsored by the Government of Canada?

Within the last six months	1
Six months ago or longer	2
Never	99

Q5B

Have you attended more than 6 of these discussions that were sponsored by the Government of Canada?

Yes	1
No	2

PREQ6

The following questions will be used for statistical purposes only. All responses are strictly confidential.

Q6 [1, 14]

Have you ever been involved in the criminal justice system?

READ LIST - SELECT ALL THAT APPLY

As a witness	1
As the victim/survivor of a non-violent crime	2
As the victim/survivor of a violent crime	3
After being accused of a crime	4
Convicted of a crime	5
As a family member of a victim/survivor	6
As a family member of an accused/convicted person	7
Know someone as victim/accused	8
As a member of a jury	9
By working in the criminal justice system	10
As a volunteer	11
Other (please specify)	77
None of the above	98
No response	99

Q7

What is the highest level of formal education that you have completed to date?

Elementary school or less	1
Secondary school	2
Some post-secondary	3
College, vocational or trade school	4
Undergraduate university program	5
Graduate or professional university program	6

No response	99

Q8

Which of the following categories best describes your total household income? That is, the total income of all persons in your household, before taxes?

READ LIST

Under $20,000	1
$20,000 to just under $40,000	2
$40,000 to just under $60,000	3
$60,000 to just under $80,000	4
$80,000 to just under $100,000	5
$100,000 to just under $120,000	6
$120,000 to just under $150,000	7
$150,000 and above	8
No response	99

QFOCUS

The focus group is an hour and 45 minutes in length, but we are asking that all participants arrive 10 minutes prior to the start time of the session. Are you able to be at the facility 10 minutes prior to the session time?

Yes	1
No	2

QTELE

We are providing each participant with a $85.00 cash incentive for their participation. The group will be taking place on Wednesday Aug. 23 from 6 p.m. to 7:45 p.m. at NRG Research Group, 360 Main Street, Suite 1910, Winnipeg, MB R3C 3Z3.

We will be giving you a reminder telephone call a day or two prior to your group discussion. Is {$_telephone} the best telephone number at which to reach you?

Yes	1
If not, obtain telephone number:	2

QEMAIL

What is an email address I can use to send you the confirmation?

NOTE TO INTERVIEWER: Confirm proper spelling.

Please provide email address:	1
No email	99

QNAME

Please confirm the spelling your first and last names: ______

NOTE TO INTERVIEWER: Confirm proper spelling. Ensure proper capitalization (IE: not all upper or lowercase).

Correct spelling	1

Name, if different: 2

THNK

In the meantime, if you have any questions or something comes up and you can longer participate in the discussions, please let us know by calling us toll-free at 1-800-388-2873 or by sending an e-mail to rzito@ekos.com. Thank you for your cooperation and time.

End of Interview
Completion 1

THNK2

Screened out

I am very sorry, but due to the parameters of the study we will not be able to include you in the focus groups.

APPENDIX C
FOCUS GROUP GUIDE

APPENDIX C: Focus Group Guide

1. Introduction

- I represent EKOS Research and these groups are being conducted for the Department of Justice to understand Canadians' perceptions, values and expectations as they relate to issues within the Criminal Justice System.
- The Minister of Justice and Attorney General of Canada is reviewing the criminal justice system. She is going to make changes that:
  - are based on evidence,
  - show compassion to victims of crime, and
  - will help to protect the public.
- The government needs Canadians to tell them what they would like to see. These focus groups are one way for the Department of Justice Canada to hear back from Canadians.
- This group is part of a series of focus groups taking place across Canada, along with a large-scale survey of Canadians that is also taking place.
- This session will last just under two hours. I will start by going over the format and "ground rules":
  - The discussion is being audio and video taped so that I can listen closely to what you are saying and not be distracted by having to write things down.
  - All comments are confidential.
  - A representative from the Department of Justice is here as an observer to hear your feedback firsthand.
  - Please try to speak one at a time so that each person's opinion can be heard.
  - There are no right or wrong answers to the things we'll be talking about. It's okay to disagree but please be respectful of one another's opinions.
  - Please speak up even if you think you're the only one who feels a certain way about an issue. Everyone may have different experiences and different points of view. We want to hear everyone's opinions.
- Moderator role: raise issues, watch time, make sure everyone participate. Please make sure that your cell phones, notifications on smart watches, etc. are turned off. We ask for your full attention for this time, without distractions.

2. Restorative Justice

Restorative Justice is based on the idea that many people are affected by crime (victim, but also offender and community). It's an approach that looks at who is harmed, and how that harm can be repaired. It invites victims, offender and community to have input on how to repair that harm, and takes into consideration the needs of victims, safety of community and offender's opportunity to take responsibility and grow.

We're going to watch a short, 4 minute video that looks at how a restorative justice process involving two adults could work. It was developed by the Collaborative Justice Program, in Ottawa, in 2015.
https://www.youtube.com/watch?v=V50vhTq4BKo

This video is based on a true case that was referred to the criminal justice system after the offender had pleaded guilty but before he was sentenced. What you saw in the video is called victim-offender mediation, which is one form of restorative justice. The program facilitators ensure that the different parties have enough information to make an informed decision about participating. Voluntary participation, flexibility and the ability to meet the needs of the parties through different processes are really important elements, including through non face-to-face means (e.g., letters, videos). Restorative Justice processes can occur at any point (e.g., pre- or post-charge or sentence).

1. Does it surprise you that this kind of process can be used to deal with violent crimes? Do you think it is appropriate for violent crimes after seeing the video?
    a. When would the use of RJ be the right thing to do? (e.g., After an accused has been charged? After offender has pled guilty or been convicted? Before a sentence? When a victim requests it?)
    b. Does gender or the relationship between the victim and the offender play a role in deciding when RJ is the right thing to do? (e.g., What if it was a man hitting his girlfriend or spouse?)
    c. Would RJ be the right thing to do if the assault happened because of the victim's race or ethnic background?

2. Do you think the offender got anything out of this process? How about the victim? Why would this be important for the victim? For the offender?
    a. Do you think that this approach allows for harm to victims to be repaired in a way that is better than a trial?
    b. Does it give the offender a chance to be responsible for their action?
    c. Research shows that RJ processes benefit victims as well as offenders. Benefits include improved mental health and well-being, possibly because the case has been resolved and victims feel they have had some input. Given this information, do you think that RJ might work better with some violent crimes than you might have thought before?

3. Problem-Solving Justice

Problem-solving courts are an approach that acknowledge the importance of dealing with the root causes of crime and conflict. Examples of problem solving courts include Drug Treatment Courts, Mental Health Courts, Community Wellness Courts and Indigenous Courts. Problem solving courts take place in a traditional courtroom but have different processes and procedures than regular court. Problem solving courts are based on strong, collaborative and cooperative partnerships between the CJS and other systems such as social services and health to address the offender's needs. Offenders are held accountable by participating in community-based programming (e.g., drug treatment, mental health treatment) and attending court on a weekly basis (or more). All courts operate differently, but generally if the offender successfully completes the court program they do not have to go to jail. If they fail to complete the court program, they must go back through the regular court system and may be sentenced to jail. These types of courts have been around in some large urban settings for the last 20 years.

This approach has a rehabilitative focus that is aimed at ensuring the long term protection of Canadians through reduced rates of reoffending. It also acknowledges the high rates of vulnerable and marginalized persons who become caught up in the criminal justice system including those with mental health, cognitive-functioning and addictions issues.

3. What do you think about this approach to criminal justice?
    a. Do you support using problem solving courts?
    b. Should problem solving courts be expanded?

4. Do you think that this approach could lead to better outcomes than more traditional ways of dealing with crime (e.g., jail)? For victims? For offenders? For the community?

4. AOJO

If you are released on bail, probation, or parole and you don't follow the conditions set out in your release order, you may be charged with a new criminal offence, called an administration of justice offence (AOJO). In this case it is not something itself illegal, such as drinking alcohol, avoiding certain parts of a town/city, or being outside the home after a certain hour. It becomes illegal because the police officer or judge has ordered you not to engage in that specific behaviour. These types of cases make up over one quarter of all cases and are the most frequent cases in adult criminal court, followed by impaired driving at 11%. People are more likely to receive a jail sentence for an AOJO than any other type of offence, including violent offences.

AOJOs can create court delays, preventing the processing of more serious cases and are estimated to cost tax payers $807 million each year.

Possible alternatives to reduce the number of people with AOJOs is to divert more from the system using other methods; reduce conditions placed on accused and find other ways to deal with root causes of criminal behaviour.

5. What do you think of the fact that over one-quarter of all cases in criminal court are for Administration of Justice Offences? These cases can include missing curfew, not showing up to court on time, consuming alcohol, or going downtown after being told not to.
   a. Should AOJOs be considered criminal offences? Why or why not? How else could the accused be held accountable (e.g., no charge, warning, mediation, diversion)?
   b. What factors would be most appropriate to consider when deciding to use alternatives to the traditional criminal justice system response to AOJOs? (e.g., the conduct leading to the breach does not result in an identifiable victim, no physical/psychological violence, no intimate partner violence? Other?)
   c. What kinds of conditions does it make sense to impose on someone accused of a crime or on offenders?
   d. Does it make sense to ask accused persons to not drink or use drugs, if addicted?
   e. Does it make sense to expect people to meet these conditions without any form of support (e.g., enrolling in community based rehabilitation programs, family or other social support)?

6. In many cases conditions may not be respected because:
   a. The accused or offenders may have addictions, mental health issues, be homeless, or trouble learning or remembering and concentrating.
   b. They may also face practical challenges, such as not having access to transportation to get places on time, lack of financial resources to meet requirements, inflexible work schedules and other barriers that make it difficult to respect an order.

7. How can we promote respect for the law, and at the same time admit these are real issues for many accused? *Prompt if needed*: People haven't been able to curb these behaviours on their own before, and nothing has been done to help them, so is it reasonable to expect that simply imposing the condition will stop the behaviour?

5. Sentencing

When an offender is found guilty of a crime, he or she is sentenced. For most offences, a judge will impose a sentence that reflects the seriousness of the crime and the offender's level of responsibility for that crime, including the offender's background and how the crime happened. Judges must also consider fair sentences handed down in other similar offenders, and for other similar offenders. A sentence can range from a fine, to probation, to house arrest, to a period of time in jail or prison.

Many charges encompass a wide range of behaviour. For example, an assault charge can include different degrees of physical force, from shoving during a disagreement to acts that cause more physical harm such as punching. This is part of what courts have a range of options they can use to decide on a fair sentence.

8. Is it fair to give all offenders convicted of the same offence the same sentence considering offences can include a wide range of behaviour (e.g., the offence of assault ranges from a shove during a disagreement up to more violent acts like punching that may cause more harm)?

Ask participants to read about the 2 cases (Tyler and Peter)

9. Should the judge treat both cases the same way, and give both the same sentence?
   a. Why or why not?
   b. What should the judge consider to decide on a fair sentence for each person? (*prompt: such as intent or degree of harm, or personal circumstances of the offender, such as history of mental illness or addiction*)?

10. Thinking about Tyler, should he be diverted out of the courts into a community based response (e.g., community service, treatment or skills program)? If not, and he goes through the courts and is found guilty, what should happen to him? Should he go to jail for this crime?

Regardless of their circumstances, all offenders convicted of shooting a gun recklessly must be sentenced to 4 years or more in jail. Judges cannot choose a shorter sentence. Judges can, however, decide on **more** than 4 years in jail.

11. Do you feel that 4 years in jail would be appropriate and fair for Tyler? Why or why not? Would at least 4 years be appropriate and fair for Peter?

The cases just described are for an offence that right now has mandatory minimum penalties of imprisonment (MMP). A mandatory minimum sentence is a jail sentence for which Parliament sets the minimum amount of time for offenders who have been convicted of a specific crime. Judges cannot go below the minimum sentence although they can give more than the minimum sentence when it makes sense to do so. In Canada, 72 offences in the *Criminal Code and the Controlled Drugs and Substances Act* carry a mandatory minimum sentence.

Some people really like these types of sentence and others do not. For each of these I want us to explore if you feel it is a valid argument, and why or why not.

12. Some argue that mandatory minimum sentences reduce the likelihood of people committing crimes.
    a. Some say that since people do not know about MMPs, they are not an effective deterrent

13. Some argue that, with a MMP, everyone is treated equally, regardless of whether they can afford a lawyer.

   a. (*Only if not raised*) Some argue that MMPs can increase the gap between the have and have-nots because the rich can afford a lawyer and fight for a not guilty verdict, or to have the charge(s) reduced to one(s) that does not carry an MMP.
   b. Research shows that MMPs have led to more trials and fewer guilty pleas/verdicts.

14. Some argue MMPs ensure that sentences are not too light because there is a guaranteed minimum period in jail.
    a. (*Only if not raised*) Some believe a guaranteed minimum period in jail is too harsh and does not lead to fair sentences in those cases where the circumstances of the offender or the crime would suggest a lesser sentence?
    b. (*Only if not raised*) Research shows that harsh sentences do not actually reduce future crime. In fact, diversion, a sentence other than jail, or lighter jail sentence combined with other elements of a sentence (e.g., restitution) are more effective than tough penalties at reducing future crime.

15. So, overall, do you think that MMPs are a good idea or a bad idea? Is it fair to impose the same minimum sentence to all offenders convicted of the same crime?

    1-Some people support MMPs and don't want to see any changes.
    2-Others oppose them, arguing they should be abolished, and that judges should be allowed to sentence offenders to a range of jail time.
    3-Some fall in the middle and say that judges should have either sentencing ranges available or at least some discretion to order a sentence that is less restrictive than the mandatory minimum when the facts (e.g., intent of behaviour, degree of responsibility taken by offender, level of harm) of the case suggest it would be fair and appropriate to do so.
    a. How do you feel about it?
        i. Should judges be allowed to impose a sentence that is less than the mandatory minimum? When (in any case, in exception cases only)?
        ii. Should judges have the flexibility to consider a less restrictive sentence – one that is not jail or prison- when the circumstances of the case suggest it would be fair and appropriate to do so?
        iii. Is it necessary to add safeguards if judges are given flexibility to impose less than mandatory minimums? What would they be (e.g., written rationale, following pre-set guidelines or ranges).

16. So, over the course of our discussion you've heard or read some information that you may not have had before and we've looked together at some actual possible scenarios of how these might unfold. Do you think that you've changed your way of thinking about these issues here today?
    a. Now that you've worked through some of the issues related to judges' discretion and flexibility to decide on sentencing and minimum mandatory sentences, do you think that your thinking is the same as it was coming into the discussion tonight or do you think that your point of view might have changed? How or why?

6. Performance

The CJS is composed of 3 sectors:

- police, who enforce the law in the community;
- courts, that prosecute the accused and sentence offenders, including lawyers, judges and other professionals; and
- corrections, that oversee sentences, including jail, community corrections such as parole and probation, and rehabilitation and intervention programs to help address offenders' needs, such as addiction, skills deficiencies, mental health, lack of housing) to reduce the chances of reoffending.

The Department of Justice is developing a Criminal Justice System Report Card to measure and report on the performance of the whole system. This will be shared with Canadians in a format that is easy to access.

17. What aspects of the criminal justice system's performance do you think should be measured or judged to tell the public how the system is doing?

18. How would you know if the system is performing well or not so well?

(Depending on answers to previous sub-question - use appropriate prompts as needed)

How would you know if the system is maintaining public safety?
If offenders have taken responsibility for their offending or are successfully rehabilitated?
If the system is fair, equitable and accessible?
If the system is timely and efficient?
If the needs of victims are met?

NOTE TO MODERATOR: Should discussion turn to crime prevention or a 'crimeless' society as a measure of 'success' of the CJS, it is important to emphasize to the participants that zero crime is unattainable. Try to keep the conversation focused on attainable results.

7. Wrap up

19. Is there anything that we haven't talked about that you want to talk about before we go?

THANK YOU

Hand Out Material

Restorative Justice (RJ)

Restorative Justice or RJ is a philosophy and an approach that views crime and conflict as harm done to people and relationships. RJ provides support and safe opportunities for voluntary participation and communication between those who are affected (victims, offenders, and community), in cases where an offender has accepted responsibility for the offence. It encourages accountability, and reparation, and tries to bring about understanding, healing, safety and a sense of closure. RJ is a non-adversarial approach to justice that emphasizes healing in victims, meaningful accountability of offenders, and the involvement of citizens in creating healthier, safer communities. RJ asks:

1. Who was harmed?
2. What are the needs and responsibilities of all affected?
3. How do all affected parties together address needs and repair harm?

It emphasizes:

1. Inviting all of those affected together to discuss how to repair the harm
2. Giving equal, respectful attention to victim's needs, offender accountability and growth and community safety
3. Restoration, healing and reintegration back into the community

There are many different RJ processes (i.e., victim offender mediation, family group conferencing, sentencing circles) and RJ can happen at just about any point in the criminal justice continuum (i.e., pre-charge, post-charge, pre-sentence, post-sentence). Flexibility and the ability to meet the needs of the parties through different processes is important, including through non face-to-face means (e.g., letters, videos).

Problem Solving Courts

Problem-solving courts are an approach that acknowledge the importance of dealing with the root causes of crime and conflict. Examples of problem solving courts include Drug Treatment Courts, Mental Health Courts, Community Wellness Courts and Indigenous Courts. Problem solving courts take place in a traditional courtroom but have different processes and procedures than regular court. Problem solving courts are based on strong, collaborative and cooperative partnerships between the CJS and other systems such as social services and health to address the offender's needs. Offenders are held accountable by participating in community-based programming (e.g., drug treatment, mental health treatment) and attending court on a weekly basis (or more). All courts operate differently, but generally if the offender successfully completes the court program they do not have to go to jail. If they fail to complete the court program, they must go back through the regular court system and may be sentenced to jail. These types of courts have been around in some large urban settings for the last 20 years.

This approach has a rehabilitative focus that is aimed at ensuring the long term protection of Canadians through reduced rates of reoffending. It also acknowledges the high rates of vulnerable and marginalized persons who become caught up in the criminal justice system including those with mental health, cognitive-functioning and addictions issues.

Administration of Justice Offences (AOJO)

If someone released on bail, probation, or parole does not follow the conditions set out in their release order, they may be charged with a new criminal offence. This is called an administration of justice offence (AOJO). This can involve an act that is not in itself illegal. Examples could be drinking alcohol, avoiding certain parts of a town/city, or being outside the home after a certain hour. These behaviours are only considered illegal in cases where a police officer or judge has ordered the person not to engage in that specific behaviour. Administration of Justice Offences are the most frequent cases in criminal courts in Canada (over one quarter). By comparison, impaired driving cases, which are the next most frequent offence, make up only 11% of all cases in adult criminal court. People found guilty of an AOJO are more likely to receive jail time than people who have committed violent crime.

These types of offences can create court delays for more serious matters such as violent crime, and cost taxpayers an estimated $807 million dollars each year.

Sentencing in Canada

When an offender is found guilty of a criminal offence, the judge must impose a sentence. For most crimes, judges have a range of sentences from which to choose, such as probation, fines, house arrest, or jail. According to the *Criminal Code*, judges are to impose a fair and appropriate sentence that takes into consideration the seriousness of the crime and how responsible the offender was for what occurred (e.g., consider the offender's personal circumstances and the circumstances surrounding the crime committed).

This means that judges decide on the sentence that is most appropriate by looking at all the relevant factors surrounding its commission, including how the offence happened, why the offender did it, as well as what an appropriate sentence was for other similar offenders, for similar offences, committed in similar circumstances.

A number of offences in the *Criminal Code* are designed to capture a broad range of behaviour. For example, an assault charge can include a shove or a punch. The variation in the conduct captured by the offence explains why courts have a range of options available to them in crafting a fair and appropriate sentence.

Description of Two Sentencing Cases (Hand Out)

A judge has the following two cases before his court.

Tyler, 27 years old, has pleaded guilty to intentionally discharging a firearm into a place while being reckless as to the consequences. On a dare from friends, he shot at a secluded farmhouse. Tyler knew someone might be in the farmhouse but he fired anyways. It turned out that no one was in the farmhouse at the time the shots were fired. Tyler has no criminal record. He experienced physical and emotional abuse from a young age. He has brain damage (Fetal Alcohol Spectrum Disorder) because his mother drank alcohol while she was pregnant with him. One of the impacts of this type of brain damage is poor decision-making and a tendency to be easily influenced by others. He seems genuinely remorseful and has apologized to the court and offered to pay for the damages to the house.

Peter, also 27 is convicted of intentionally discharging a firearm into a place while being reckless as to the consequences. Peter is a member of a street gang and he drove by a rival gang member's house in downtown Toronto and shot into the house. He knew someone might be home but fired anyways. It turned out that no one was in the house at the time. Peter has previously been convicted of mischief and assault in his early twenties. Peter was raised by a single mom who worked two jobs. They lived in a low income neighbourhood. He was recruited into a gang in his neighbourhood in his late teens. Peter shows no remorse for his crime.

APPENDIX D
FIRST SURVEY QUESTIONNAIRE

APPENDIX D: First Survey Questionnaire

INTRO

Thank you for your interest in taking this survey. The Government of Canada has hired EKOS Research to conduct a Public Opinion Survey on behalf of the Department of Justice. Your participation is voluntary and completely confidential. Your answers will remain anonymous. Any information you provide will be administered in accordance with the Privacy Act and other applicable privacy laws. This survey is registered with the Marketing Research and Intelligence Association.

The Minister of Justice and Attorney General of Canada is reviewing the criminal justice system. She is going to make changes that:

- are based on evidence,
- show compassion to victims of crime, and
- will help to protect the public.

The government needs Canadians to tell them what they would like to see. This survey is one way for the Department of Justice Canada to hear back from Canadians. Let's begin with a couple of general questions. The full questionnaire should take you approximately 30 minutes to answer. All your answers will be kept confidential and will never be attributed to you, so please be as honest as you can. **A few reminders before beginning...** On each screen, after selecting your answer, click on the "Continue" button at the bottom of the screen to move forward in the survey. If you leave the survey before completing it, you can return to the survey URL later, and you will be returned to the page where you left off. Your answers up to that point in the survey will be saved. If you have any questions about how to complete the survey, please call Prob*it* at 866.211.8881 or send an email to online@probit.ca. Thank you in advance for your participation.

PREQA

When someone is convicted of a crime, he or she appears for sentencing. A judge will impose a sentence that reflects the seriousness of the crime and the offender's level of responsibility for that crime.

QA

How much would you say you know about how the criminal courts in Canada sentence people?

Nothing 1	1
2	2
3	3
A moderate amount 4	4
5	5
6	6

A lot 7	7
Don't know	99

PREQ1

How important is it for a judge to consider each of the following when deciding on a sentence that is fair and appropriate

Q1A

The seriousness of the specific offence (e.g., circumstances surrounding the crime, was there a victim)

Not at all important 1	1
2	2
3	3
Moderately important 4	4
5	5
6	6
Very important 7	7
Don't know	99
No opinion	98

Q1B

How responsible or blameworthy the offender is (e.g., how responsible the offender is for their behaviour due to personal circumstances)

PREQ2

A number of offences in the *Criminal Code of Canada* include a range of behaviours from less serious to more serious. For example, an assault charge can be given for a shove during a disagreement as well as other acts of violence that can cause more harm to a person. This variation explains why courts have a range of options available to them at sentencing.

Q2

Given that a wide range of behaviours is included in a single offence (a shove or a punch are both called assault), do you believe that it would be fair and appropriate to give all offenders convicted of the same offence (e.g., assault) the same sentence? That is, should the offender who shoved someone and the offender who punched someone always be treated the same or should their sentences be different?

Yes, they should have the same sentences	1
No, they should have different sentences	2
Hard to tell without more information on each	3
Don't know	99
No opinion	98

Q3

The following three options represent different degrees of discretion that judges could have when sentencing offenders. Which of these do you think is the best approach for determining fair and appropriate sentences for offenders?

Judges are free to decide sentences after looking at how the offence happened, why the offender did it and what sentences were given in other similar cases.	1
Judges decide sentences by using guidelines. Judges are free to choose the right sentence within those guidelines and can go outside the guidelines in those few cases where they feel a different sentence is needed. Judges would give the reasons for their decision in writing.	2
Judges give everyone who commits the same offence the same sentence no matter the individual circumstances of the offence and the offender.	3
Don't know	99
No opinion	98

PREQ4

Surveys show that many Canadians and some judges believe that sentencing is not consistent. Sentences for the same offence can differ from one case to the next. Using sentencing guidelines could be one way to help sentencing be more consistent. If they had guidelines, judges could choose from a range of sentences for each offence. Judges would think about how each offence happened and why and how the offender did it. They would then choose a sentence within the range.

If a case was unusual in some way, the judge could go outside these choices, decide on another sentence, and would give reasons why.

Many countries provide their courts with guidelines to follow at sentencing, for example, the United Kingdom and the United States. Judges in Canada do not have guidelines like these when they sentence offenders.

Q6

To what extent do you believe that guidelines for sentencing would help make sentencing more consistent?

Not at all 1	1
2	2
3	3
Moderately 4	4
5	5
6	6
Strongly 7	7
Don't know	99
No opinion	98

Q7

Do you think that set guidelines for sentencing should be considered for Canada?

Yes	1
No	2
Don't know	99
No opinion	98

PREQ8

A number of countries including Australia, the United Kingdom, and the United States have an independent organization comprised of judges, criminal justice professionals, crime victims' advocates, and academics which undertake one or more of the following activities:

- give courts/judges guidelines to follow when they decide on sentencing,
- recommend ideas to reform sentencing to the government,
- conduct research to develop more effective sentencing practices, and/or
- give information to crime victims and the public about sentencing practices and research.

These independent organizations are referred to as sentencing commissions.

Q8A

To what extent do you believe that sentencing commissions would help make sentencing more consistent?

Not at all 1	1
2	2
3	3
Moderately 4	4
5	5
6	6
Strongly 7	7
Don't know	99
No opinion	98

Q8

Do you think that an independent organization (sentencing commission) should be considered for Canada?

Yes	1
No	2
Don't know	99

Q9 [1, 5]

Which of the aspect(s) of a sentencing commission seem most important?

Check all that apply

give courts/judges guidelines to follow when they decide on sentencing	1
recommend ideas to reform sentencing to the government and Parliament	2
research effective sentencing practices	3
give information to crime victims and the public about sentencing practices and research	4
None of these activities seem important	5
Don't know	99
No opinion	98

PREQ9A

Currently there is considerable concern about criminal court delays. It takes a long time between a person being charged with an offence and the charge being resolved in a court hearing. Long trials cost money and mean more stress for crime victims and witnesses. The longer it takes to deal with less serious offences in court the less time and resources exist to deal with the most serious cases. In cases of extreme delays, the Supreme Court has said that the charges against the accused have to be dropped because they violate their Charter rights to a speedy trial.

Although there are many reasons for court delays, one way to reduce pressure on the courts is to reduce the number of cases before them. Diversion provides a way of holding accused accountable through means other than a trial. This approach can be used as long as society is still protected and when the accused accepts responsibility for his or her actions. Options for diversion can include community service, mediation, referrals to specialized programs for counselling, treatment or education, (for example, life skills, drug or alcohol treatment, anger management), referrals to community or aboriginal committees, victim-offender reconciliation programs and similar measures aimed at restorative justice, or even a letter of apology or essay.

Do you believe that increased use of diversion could make the criminal justice system:

Q9A1A

more effective (e.g., holding people to account in an appropriate way)?

Yes	1
No	2
Don't know	99
No opinion	98

Q9A1B

more efficient (e.g., reduce the caseload of courts and court processing time)?

Q9C [0,1]

Why do you think that diversion may or may not have a positive impact on the criminal justice system?

Please specify :	77
Don't know	99
No opinion	98

PREQB

It was indicated earlier that many offences, such as assault, sexual assault or drug trafficking, include a wide range of behaviour from relatively less serious to more serious. Next, you will be presented with three examples of cases that may come before the Canadian courts.

PQ10A

David / Ali is convicted of sexual assault involving a minor. He is 27 years old, and was heading home after a night of drinking with his friends when he touched the breasts of and tried to grope a stranger, Anna, (a 15 year-old girl) on a city bus. This behaviour was out of character for David / Ali who has no previous criminal record of any kind. David / Ali lives at home, has completed college, and is employed as a chef. He pled guilty and apologized to the victim in court.

Q10

In your view, should David / Ali have been diverted out of the court system to be held accountable for the crime of sexual assault involving a minor in alternative ways as described previously (e.g., community service, mediation, referrals to specialized rehabilitative programs and/or victim-offender reconciliation programs), or stayed in the system to be prosecuted and face trial?

Diverted	1
Stayed in system	2
Don't know	99
No opinion	98

Q11 [0,1]

Not DK, Q10

Why do you feel that this is the best response for David / Ali 's case?

Please specify :	77
Don't know	99

Q11B

DK, Q11, Q10

What is it that makes you unsure?

Please specify :	77
Don't know	99

Q12

Not diversion, Q10

Which of the following options is the most appropriate way to hold David / Ali accountable for his offence?

An absolute discharge meaning that he will not get a criminal record, nor will he get any other sentence	1
Conditional Discharge where he must obey court conditions for a certain period of time then he will not get a criminal record.	2
Restitution where he must pay an amount to the victim equal to the harm he caused.	3
He must pay a fine to the court.	4
If he and the victim(s) agree voluntarily they could meet (e.g. face-to-face, by letters, by video) to talk about and respond to their needs in respect of the crime; these needs could include gaining a better understanding of why, seeking forgiveness, and other ways to repair the harm done.	5
He remains in the community on probation. He will be required to follow a number of conditions: he may have to attend some type of rehabilitative programming, he may not be allowed to do certain activities, he may have to report to a probation officer	6
House arrest where he is not allowed to leave his home except under certain conditions (e.g., to go to work, participate in rehabilitative program)	7
He goes to jail.	8
Don't know	99
No opinion	98

PREQ13

In Canada, regardless of circumstances, all offenders convicted of sexual assault of a minor must receive a sentence of 6 months *or more* jail[10]. Judges have no flexibility to choose a different form of sentence. This means there is no possibility of alternative measures or any other form of sentence, including a shorter period in jail. Judges are able, however, to give **more** than 6 months in jail.

Q13

The judge gave David / Ali the minimum sentence, which is six months in jail. Do you believe that this sentence is appropriate and fair?

Yes	1
No	2
Don't know	99
No opinion	98

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[10] He could have had a minimum of 1 year or more if the crown decided to proceed on indictment which is a decision that the crown makes based on the seriousness of the offence.

Q13B

Fair and appropriate, Q13

Why do you feel that this is appropriate and fair?

Please specify :	77
Don't know	99
No opinion	98

Q14

Not appropriate and fair, Q13

Do you think that he should have received:

Less time in prison?	1
More time in prison?	2
A different type of sentence (other than jail e.g., house arrest, probation, etc.)	77
Don't know	99
No opinion	98

PREQ20

Tyler / Carlos, 21 years old, is convicted of intentionally discharging a firearm while being reckless to the consequences. On a dare from friends, he shot at a secluded farmhouse. Tyler / Carlos knew someone might be home but fired anyways. It turned out that no one was home at the time.

Tyler / Carlos has no criminal record. He experienced physical and emotional abuse from a young age. He has brain damage (Fetal Alcohol Spectrum Disorder) as a result of his mother drinking alcohol during her pregnancy with him. One of the impacts of the brain damage is poor decision-making and a tendency to be easily influenced by others.

Q20

In your view, should Tyler / Carlos have been diverted out of the court system to be held accountable for the crime of intentionally discharging a firearm in alternative ways as described previously (e.g., community service, mediation, referrals to specialized rehabilitative programs and/or victim-offender reconciliation programs) or stayed in the system to be prosecuted and face trial?

Diverted	1
Stayed in system	2
Don't know	99
No opinion	98

Q21 [0,1]

Not DK, Q20

Why do you feel that this is the most appropriate action to be taken in Tyler / Carlos's case?

Please specify :	77
Don't know	99
No opinion	98

Q21B

DK, Q21, Q20

What is it that makes you unsure?

Please specify :	77
Don't know	99

Q22

Not diversion, Q20

Which of the following options is the most appropriate way to hold Tyler / Carlos accountable for his offence?

An absolute discharge meaning that he will not get a criminal record, nor will he get any other sentence.	1
Conditional Discharge where he must obey court conditions for a certain period of time then he will not get a criminal record.	2
He must pay a fine to the court.	4
He remains in the community on probation. He will be required to follow a number of conditions: he may have to attend some type of rehabilitative programming, he may not be allowed to do certain activities, he may have to report to a probation officer	6
House arrest where he is not allowed to leave his home except under certain conditions (e.g., to go to work, participate in rehabilitative program)	7
He goes to jail.	8
Don't know	99
No opinion	98

PREQ23

Regardless of their circumstances, all offenders convicted of discharging a firearm while being intentionally reckless must be sentenced to 4 years or more in jail for committing this firearm offence. Judges have no flexibility in choosing a less restrictive sentence. Judges are able, however, to give **more** than 4 years in jail.

Q23

The judge gave Tyler / Carlos the minimum sentence of 4 years. Do you believe that this sentence is appropriate and fair?

Yes	1
No	2
Don't know	99
No opinion	98

Q23B

Fair and appropriate, Q23

Why do you feel that this is appropriate and fair?

Please specify :	77
Don't know	99
No opinion	98

Q24

Jail, Q22 and No, Q23

Do you think that he should have received:

Less time in prison?	1
More time in prison?	2
A different type of sentence (other than prison e.g., house arrest, probation, etc.)	77
Don't know	99
No opinion	98

PREQ26

Sarah / Adhira is convicted of drug trafficking. She was caught selling some of her prescription opioid pills. When she was arrested, a knife was found in her backpack, which she claimed was for protection. She has a legitimate prescription for opioids due to chronic pain, but has been selling some of the pills to make money. Sarah / Adhira is a 36 year-old mother of two, and is the sole provider for her family. Sarah / Adhira has struggled with prescription drug abuse for some time.

Because Sarah / Adhira was sent to jail and she had no family around to care for them, her kids had were placed with child protective services at least until another arrangement could be made.

Q26

In your view, should Sarah / Adhira have been diverted out of the court system to be held accountable for the crime of drug trafficking in alternative ways as described previously (e.g., community service, mediation, referrals to specialized rehabilitative programs and/or victim-offender reconciliation programs), or stayed in the system to be prosecuted and face trial?

Diverted	1
Stayed in system	2
Don't know	99
No opinion	98

Q27 [0,1]

Not DK, Q26

Why do you feel that this is the most appropriate action to be taken in Sarah / Adhira 's case?

Please specify :	77

Don't know	99
No opinion	98

Q27B

DK, Q27, Q26

What is it that makes you unsure?

Please specify :	77
Don't know	99

Q28

Not diversion, Q26

Which of the following options is the most appropriate way to hold Sarah / Adhira accountable for her offence?

An absolute discharge meaning that she will not get a criminal record, nor will she get any other sentence.	1
Conditional Discharge where she must obey court conditions for a certain period of time then will not get a criminal record.	2
She must pay a fine to the court.	4
She remains in the community on probation. She will be required to follow a number of conditions: she may have to attend some type of rehabilitative programming, she may not be allowed to do certain activities, she may have to report to a probation officer	6
House arrest where she is not allowed to leave her home except under certain conditions (e.g., to go to work, participate in a rehabilitative program).	7
She goes to jail.	8
Don't know	99
No opinion	98

PREQ29

Regardless of the circumstances, all offenders convicted of drug trafficking while carrying a weapon must be sentenced to 1 year *or more* in jail for committing this drug trafficking offence. Judges have no flexibility in choosing a less restrictive sentence. Judges are able, however, to give **more** than 1 year in jail.

Q29

The judge gave Sarah / Adhira the minimum sentence of 1 year. Do you believe that this sentence is appropriate and fair?

Yes	1
No	2
Don't know	99
No opinion	98

Q29B

Why do you feel that this is appropriate and fair?

Please specify :	77
Don't know	99
No opinion	98

Q30

Jail, Q28 and No, Q29

Do you think that she should have received:

Less time in prison?	1
More time in prison?	2
A different type of sentence (other than prison e.g., house arrest, probation, etc.)	77
Don't know	99
No opinion	98

Q25B

Should judges be allowed to consider personal circumstances such as brain damage, mental health problems or other such in deciding on a less restrictive sentence, even when there is a required minimum sentence?

Yes	1
No	2
Don't know	99
No opinion	98

Q25C

Should judges be allowed to consider family circumstances such as the harm to young children, if the offender is the sole breadwinner or caregiver, in deciding on a less restrictive sentence, even when there is a required minimum sentence?

Yes	1
No	2
Don't know	99
No opinion	98

Q34

What is your level of knowledge of Mandatory Minimum Sentences in Canada?

Nothing 1	1
2	2
3	3
A moderate amount 4	4
5	5

6	6
A lot 7	7
Don't know	99
No opinion	98

PREQ35

The cases just described involve offences that currently carry mandatory minimum sentences of imprisonment. A mandatory minimum sentence is a jail sentence where the minimum length of time for a conviction of a specific crime has been set by Parliament, and a judge may not go below the minimum sentence although they are able to give more than the minimum sentence when it is appropriate. For offences that carry mandatory minimum sentences, judges have no flexibility to sentence someone below the mandatory minimum. In Canada, there are 72 offences in the *Criminal Code and the Controlled Drugs and Substances Act* that carry a mandatory minimum sentence, including the offences noted in the scenarios presented.

Many countries have a clause in their mandatory minimum sentences that allow judges to go below the minimum in exceptional cases. Judges in Canada do not have this option these when they sentence offenders.

Q35A

Having just thought about these three cases involving mandatory minimum sentences, do you think that in general, applying the same minimum sentence to all offenders who are convicted of the same offence is fair and appropriate?

Yes	1
No	2
Don't know	99
No opinion	98

Q35B

Why or why not?

Please specify :	77
Don't know	99

PREQ36

Judges are always free to go above the mandatory minimum when it is fair and appropriate. How important is it that:

Q36A

Judges also be allowed to impose a sentence that is less than the mandatory minimum where the facts of the case (e.g., intent of behaviour, degree of responsibility taken by offender, level of harm) suggest a lesser sentence might be fair and appropriate?

Not at all important 1	1
2	2
3	3

Moderately important 4	4
5	5
6	6
Very important 7	7
Don't know	99

Q36B

Judges have the flexibility to consider a less restrictive sentence (e.g., sentence other than jail or prison) than the mandatory minimum when the circumstances of the case suggest it would be fair and appropriate to do so?

PREQA3

Some people believe that mandatory minimum sentences make sentencing more equal and fair across different groups (e.g., rich and poor) because there is a set minimum applied to everyone.

Others say that mandatory minimum sentences do not make sentences more equal and fair and actually contribute to the divide because those who can hire a lawyer can fight the charge or try to have the charge changed to an offence with no mandatory minimum sentence. Those who cannot may have no choice but to plead guilty or represent themselves in court.

QA3A

Which of these 2 do you find to be more convincing and believable?

Mandatory minimum sentences make sentencing more fair and equal	1
Mandatory minimum sentences increase the gap between rich and poor	2
Don't know	99
No opinion	98

QA3B

Not DK, QA3A

Why is <QA3A> more believable?

Please specify :	77
Don't know	99
No opinion	98

PREQA4

Some people believe that mandatory minimum sentences ensure that sentences are not too light because there is a guaranteed minimum period of incarceration.

Others say that a guaranteed minimum period of incarceration is too harsh and does not lead to fair and appropriate sentences in those cases where the circumstances of the offender or the crime would suggest a lesser sentence.

Remember that judges are always able to give a longer period of incarceration if appropriate and fair, regardless of whether or not there is a mandatory minimum sentence.

QA4A

Which of these 2 do you find to be more convincing and believable?

Mandatory minimum sentences ensure that sentences are not too light	1
Mandatory minimum sentences may be too harsh and do not always lead to fair and appropriate sentences	2
Don't know	99
No opinion	98

QA4B

Not DK, QA4A

Why is <QA4A> more believable?

Please specify :	77
Don't know	99
No opinion	98

PREQA5

Some say that mandatory minimums are a strong deterrent for people to commit crime because they would know that there would be a guaranteed minimum term in jail/prison. Others say that most people do not even know which crimes carry mandatory minimum sentences so they would not work well as a deterrent.

QA5A

Which of these 2 do you find to be more convincing and believable?

Mandatory minimum sentences are a strong deterrent for people to commit crime	1
Mandatory minimum sentences do not act as a strong deterrent	2
Don't know	99
No opinion	98

QA5B

Strong deterrent, QA5A

Research shows that harsh sentences actually do not act as a deterrent. Diversion, a sentence other than jail, or lighter jail sentence combined with other elements of a sentence (e.g., restitution) are more effective at reducing future crime than tougher jail sentences in some cases. Does knowing this make the statement that mandatory minimum sentences are a strong deterrent for people to commit crime less convincing or believable?

Yes	1
No	2
Don't know	99

No opinion	98

PREQA6

Some people believe that mandatory minimums **decrease** the pressure on the courts and reduce the amount of time it takes to complete cases before the court because everyone is given at least the same minimum sentence.

Other people say that mandatory minimum sentences **increase** pressure on the courts and the length of time it takes to resolve cases because all persons charged with mandatory minimum sentences must go through the courts. Accused cannot be diverted out of the courts, and may be even more likely to fight a charge that carries an MMS because there is a guaranteed term of imprisonment.

QA6A

Which of these 2 do you find to be more convincing and believable?

Mandatory minimum sentences decrease the pressure on the courts and the time to complete cases	1
Mandatory minimum sentences increase the pressure on the courts and the time to complete cases	2
Don't know	99
No opinion	98

QA6B

Not DK, QA6A

Why is <QA6A> more believable?

Please specify :	77
Don't know	99
No opinion	98

PREQA2

Research shows that mandatory minimum sentences are one of the factors that are actually contributing to court delays in Canada because fewer offenders plead guilty, and these cases are more likely to go to trial.

QA2A

Does knowing this make the statement that mandatory minimums decrease pressure on the courts less convincing or believable?

Yes	1
No	2
Don't know	99
No opinion	98

Q38

Should Canada consider giving judges flexibility to impose a lesser sentence than the mandatory minimum?

Yes	1
Yes, but only for exceptional circumstances	2
No	3
Don't know	98
No opinion	99

DEMIN

The following questions will be used for statistical purposes only. All responses are strictly confidential.

Q41 [1,11]

Have you ever been involved in the criminal justice system?

Choose all that apply

Testifying as a witness in criminal court	1
Jury member chosen to participate in a criminal trial	2
As the victim/survivor of a non-violent crime	3
As the victim/survivor of a violent crime	4
After being charged/convicted of a crime	5
As a family member of a victim/survivor	6
As a family member of an accused/convicted person	7
Know someone as victim/accused	8
By working in the criminal justice system/Working in a related field	9
Volunteering in the criminal justice or related area	10
Other (please specify) :	77
I have not been involved in the CJS before	98
Prefer not to answer	99

QEDUC

What is the highest level of formal education that you have completed to date?

Grade 8 or less	1
Some high school	2
High School diploma or equivalent	3
Registered Apprenticeship or other trades certificate or diploma	4
Some post-secondary (not completed)	5
College, CEGEP or other non-university certificate or diploma	6
University certificate or diploma below bachelor's level	7
Bachelor's degree	8
Post graduate degree above bachelor's level	9
Prefer not to answer	99

QINC

Which of the following categories best describes your total household income? That is, the total income of all persons in your household, before taxes?

Under $20,000	1
$20,000 to just under $40,000	2
$40,000 to just under $60,000	3
$60,000 to just under $80,000	4
$80,000 to just under $100,000	5
$100,000 to just under $120,000	6
$120,000 to just under $150,000	7
$150,000 and above	8
Prefer not to answer	99

QBORN

Were you born in Canada?

Yes	1
No	2
Prefer not to answer	99

QMINOR [1,5]

Do you consider yourself to belong to any of the following groups?

A member of a visible minority	1
An Aboriginal person	2
A person with a disability	3
None of the above	98
Prefer not to answer	99

QAGEX

In what year were you born?

Year :	77
Prefer not to answer	99

QAGEY

Hesitant, QAGEX

In which of the following age categories do you belong?

less than 18 years old	1
18 to 24	2
25 to 34	3
35 to 44	4
45 to 54	5
55 to 64	6
65 or older	7
Prefer not to answer	9

QEMP

Which of the following categories best describes your current employment status? Are you...?

Working full-time, that is, 35 or more hours per week	1
Working part-time, that is, less than 35 hours per week	2
Self-employed	3
Unemployed, but looking for work	4
A student attending school full-time	5
Retired	6
Not in the workforce (disability, full-time homemaker, unemployed, not looking for work)	7
Other	77
Prefer not to answer	99

QCOMM

In what type of community do you live?

Urban (town, city, suburb)	1
Rural (small or sparsely populated community, with fewer than 5,000 or so residents, usually with considerable open/farm land surrounding it)	2
Remote (at least 2 hours drive from an urban centre and lacks reliable transportation links)	3
On reserve	4
None of the above	98
Prefer not to answer	99

QGENDER

What is your gender?

Male	1
Female	2
Transgender	3
Do not identify as male, female or transgender	4
Prefer not to answer	99

QFSA

What are the first three characters of your postal code?

Please specify :	77
Prefer not to answer	99

QPROV

Hesitant

In which province or territory do you live?

Alberta	1

British Columbia	2
Manitoba	3
New Brunswick	4
Newfoundland & Labrador	5
Northwest Territories	6
Nova Scotia	7
Nunavut	8
Ontario	9
Prince Edward Island	10
Quebec	11
Saskatchewan	12
Yukon	13
Prefer not to answer	99

THNK

Thank you for participating in our survey. You should expect to receive your $15 amazon.ca gift code by email within the week.

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APPENDIX E
SECOND SURVEY QUESTIONNAIRE

APPENDIX E: Second Survey Questionnaire

INTRO

Thank you for your interest in taking this survey. The Government of Canada has hired EKOS Research to conduct a Public Opinion Survey on behalf of the Department of Justice. Your participation is voluntary and completely confidential. Your answers will remain anonymous. Any information you provide will be administered in accordance with the Privacy Act and other applicable privacy laws. This survey is registered with the Marketing Research and Intelligence Association. The Minister of Justice and Attorney General of Canada is reviewing the criminal justice system. Her guiding principles are:

<principles>

The government is interested to know what reforms Canadians would like to see. This survey is one way for the Department of Justice Canada to hear back from Canadians. The full questionnaire should take you approximately 15 minutes to answer. All your answers will be kept confidential and will never be attributed to you, so please be as candid as you can. **A few reminders before beginning...** On each screen, after selecting your answer, click on the "Continue" button at the bottom of the screen to move forward in the survey. If you leave the survey before completing it, you can return to the survey URL later, and you will be returned to the page where you left off. Your answers up to that point in the survey will be saved. If you have any questions about how to complete the survey, please call Prob*it* at 866.211.8881 or send an email to online@probit.ca. Thank you in advance for your participation.

QAGEXB

In what year were you born?

Year :	77
Prefer not to answer	99

QAGEYB

Hesitant, QAGEXB

In which of the following age categories do you belong?

less than 18 years old	1
18 to 24	2
25 to 34	3
35 to 44	4
45 to 54	5
55 to 64	6
65 or older	7
Prefer not to answer	9

QEDUC

What is the highest level of formal education that you have completed to date?

Grade 8 or less	1
Some high school	2
High School diploma or equivalent	3
Registered Apprenticeship or other trades certificate or diploma	4
Some post-secondary (not completed)	5
College, CEGEP or other non-university certificate or diploma	6
University certificate or diploma below bachelor's level	7
Bachelor's degree	8
Post graduate degree above bachelor's level	9
Prefer not to answer	99

PREQ1

Sometimes the public interest may be better served if a criminal case is resolved outside of the traditional process (i.e., courts, prosecution etc.), using another way to hold the accused responsible for his or her actions instead of a criminal trial. This approach can be used when the accused accepts responsibility for his or her actions, and as long as there is no risk to public safety. It can include:

community service;

enrolment in specialized programs for counselling, treatment or education; or

referral to community or Indigenous justice committees, or restorative justice programs, such as victim-offender reconciliation.

Q1

Which of the following do you think that diversion/alternative measures (as described above) should be the preferred response for, if any:

Select only 1

All accused, unless specific elements of the case warrant more restrictive measures	1
Anyone accused of non-violent crime, who has never previously been convicted	2
Anyone accused of non-violent crime, unless specific elements of the case warrant more restrictive measures	3
With other types of cases (specify)	77
Never/Almost never	98
Don't know	99

PREQ5

Now we will turn to different approaches to justice – restorative justice and problem solving justice.

Q5

How familiar are you with restorative justice?

Not at all 1	1
2	2
Moderately familiar 3	3
4	4
Very familiar 5	5
Don't know	99

PREQ6

Restorative justice (RJ) provides supportive and safe opportunities for communication between those who are affected by an offence (victims, offenders, and/or community), in cases where an offender has accepted responsibility for the offence and both the victim and the offender voluntarily agree to participate. Restorative justice emphasizes repairing harm, healing in victims and meaningful accountability of offenders. There are many different RJ processes, including victim offender mediation.

Q6

Should victims of crime be able to meet with their offenders and tell them about the impact of the crime, if they wish to do so?

Yes	1
No	2
Don't know	9

Q7

Should restorative justice be available to all victims and offenders, regardless of the type of crime committed, provided that both the victim and the offender want to take part in the process and the offender admits his/her guilt?

Yes	1
No	2
Don't know	9

PREQ8

How likely is it that restorative justice would:

Q8

Help victims and families to heal and get closure in the aftermath of a crime

Not at all likely 1	1
2	2
Moderately likely 3	3
4	4
Very likely 5	5
Don't know	99

Q9

Enable the offender to demonstrate accountability for their behaviour and the harm they have caused to a victim

Q10

Do you believe that RJ would provide an experience for victims of crime that is more satisfying and meaningful, or less satisfying and meaningful than experienced in the mainstream justice system?

Much less satisfying and meaningful than mainstream 1	1
2	2
About the same 3	3
4	4
Much more satisfying and meaningful than mainstream 5	5
Don't know	99

PREQ11

Problem-solving justice is an approach aimed at addressing the root causes of crime and conflict.

It holds offenders accountable through monitoring participation in community-based programs (e.g., drug treatment, mental health treatment), and tracking progress towards rehabilitation goals. It relies on partnerships between community-based resources, the criminal justice system and other systems such as social services, health and education. A key element is that offenders are supported to identify and address their needs.

This approach acknowledges that there are many vulnerable and marginalized persons caught up in the criminal justice system, including those with mental health and addictions issues and cognitive functioning issues, such as fetal alcohol spectrum disorder.

Q11

To what extent do you believe that the criminal justice system should promote problem solving approaches to crime in Canada, in appropriate cases?

1 Not at all	1
2	2
3 Moderately believe	3
4	4
5 Strongly believe	5
Don't know	99

Q12

Do you think this problem solving approach to criminal justice could adequately hold people to account for their crime(s), in appropriate cases?

Yes	1
No	2
Don't know	9

PQ13

How likely is it that this approach would result in:

Q13

Reduced rates of re-offending compared with more traditional ways of dealing with crime (e.g., jail).

Not at all likely 1	1
2	2
Moderately likely 3	3
4	4
Very likely 5	5
Don't know	99

Q13A

Better outcomes for offenders compared with more traditional ways of dealing with crime (e.g., jail).

PREQ15

If people released on bail or probation do not follow the conditions set out in their release order, they may be charged with a new criminal offence-an administration of justice offence or AOJO. This may involve an act that is not considered criminal itself but is considered as such because the accused was given an order not to engage in the behaviour as a condition of their release.

Examples could be missing a curfew, drinking alcohol, or not attending a prearranged meeting. There can be many reasons why people may not respect conditions such as these including addictions, mental health issues, homelessness, or have trouble learning, remembering and concentrating. There may also be practical issues (employer that doesn't give them time off, they have no transportation or a lack of money, etc.).

If people commit a crime while subject to a probation order or while on release, they are charged with the new crime (e.g., theft, assault, etc.) as well as an AOJO, for violating the general condition of keeping the peace and being of good behaviour.

Administration of Justice Offences account for one quarter of the cases in criminal courts in Canada. They cost taxpayers an estimated $807 million each year.

Q15A

Do you think that the behaviours described above (missing a curfew, drinking alcohol, or not attending a prearranged meeting) should be dealt with by laying a new criminal charge (an administration of justice offence), or should they be dealt with in some other way, outside of the courts?

A new criminal charge should be laid and the accused should go to court to be prosecuted	1
There should be other ways to deal with these acts outside of the courts	2
Don't know	9

Q17B [1,3]

Outside courts, Q15A

Do you have any ideas for how criminal justice system professionals (e.g., police, probation officers, judges) could address these behaviours (e.g., administration of justice offences such as missing a curfew, drinking alcohol, or not attending a prearranged meeting) outside of the courts?

Yes, please specify :	77
No ideas	98
Don't know	99

Q18

Do you think that how CJS professionals respond to persons failing to respect conditions such as those previously noted should be determined based on :

Taking individual circumstances into account	1
Responding in the same way to all	2
Don't know	9

Q19 [1,8]

Taking individual circumstances into account, Q18

Which of the following types of circumstances do you think are important to consider in deciding how to respond to breaches of conditions?

Choose all that apply

Whether addictions, mental health problems or cognitive functioning issues affected the accused/offender's ability to comply with the order	1
The personal circumstances and history of the accused/offender	2
The number of past breaches	3
Whether the accused/offender intentionally breached the condition (i.e., did not respect their order)	4

Whether the breach was due to practical issues or unforeseen issues such as work schedules, lack of transportation, unavoidable delays or unexpected situations that arose	5
Whether there was any risk to vulnerable people (children, victims)	6
Other (please specify)	77
None of the above– should respond the same way regardless of the circumstances	98
Don't know	99

PREQ20

The next questions are about your views on measuring how the criminal justice system performs.

The Department of Justice Canada is developing a *State of the Criminal Justice System Report* to measure and report on the performance of the system as a whole.

It will share the results with Canadians in an on-line dashboard.

Q20

How important do you think it is to Canadians to know how well the Criminal Justice System is performing?

Not at all important 1	1
2	2
Moderately important 3	3
4	4
Very important 5	5
Don't know	99

PQ22

Which five aspects of the criminal justice system's performance are you most interested in knowing about? Rank the top five.

(Please select only 1 per column)

Q22A

First

Pick 1 in this column

Maintain public safety by preventing and responding to crime	1
Hold offenders accountable for their actions	2
Help offenders to rehabilitate and to reintegrate into their community	3
Help victims and meet their needs	4
Restore relationships between offenders and victims	5
Repair harm caused to the victims	6

Provide a system that is fair to all	7
Provide a system that is accessible to all	8
Operate effectively (i.e., operates in a way that achieves its expected outcomes)	9
Operate efficiently (i.e., operate in a way that uses resources to obtain an optimal level of outputs or outcomes; value for money)	10
Maintaining Canadians' confidence and respect toward the system	11
Other (state what else you would like to know) : ______	77

Q22B

Second

Pick 1 in this column

Q22C

Third

Pick 1 in this column

Q22D

Fourth

Pick 1 in this column

Q22E

Fifth

Pick 1 in this column

PREQ23

The next questions are about how you see the work of the criminal justice system as a whole – including

criminal law,

law enforcement,

legal services and courts,

victim services,

alternative paths to justice, such as restorative justice, and

remedies, such as correctional services (including jails/prisons, community supervision, and rehabilitation).

Access to the criminal justice system means having equal access to the information and assistance that is needed to help prevent legal issues and help resolve such issues efficiently, affordably, and fairly.

How confident are you that the Canadian criminal justice system is accessible to all people...

Q23

Who are accused and/or found guilty of a criminal offence?

Not at all confident 1	1
2	2
Moderately confident 3	3
4	4
Very confident 5	5
Don't know	99

Q24

Who are victims of a criminal offence?

PREQ25

Fairness means being treated according to the rule of law, without discrimination, while also having a person's individual characteristics considered throughout the process (e.g., considering past behaviours, history of victimization, mental health and substance abuse issues, etc.).

How confident are you that the Canadian criminal justice system is fair to all people...

Q25

Who are accused and/or found guilty of a criminal offence?

Not at all confident 1	1
2	2
Moderately confident 3	3
4	4
Very confident 5	5
Don't know	99

Q26

Who are victims of a criminal offence?

Q27

Overall, how much confidence do you have in the Canadian criminal justice system?

No confidence at all 1	1
2	2
Moderate confidence 3	3
4	4
Very confident 5	5
Don't know	99

Q28 [1,3]

3 or less, Q23-Q27

Can you describe what aspects of the criminal justice system make you less confident?

Please specify :	77
Don't know	99
Prefer not to answer	98

DEMIN

The following questions will be used for statistical purposes only. All responses are strictly confidential.

Q41 [1,11]

Have you ever been involved in the criminal justice system?

Choose all that apply	
Testifying as a witness in criminal court	1
Jury member chosen to participate in a criminal trial	2
As the victim/survivor of a non-violent crime	3
As the victim/survivor of a violent crime	4
After being charged/convicted of a crime	5
As a family member of a victim/survivor	6
As a family member of an accused/convicted person	7
Know someone as victim/accused	8
By working in the criminal justice system/Working in a related field	9
Volunteering in the criminal justice or related area	10
Other (please specify) :	77
I have not been involved in the CJS before	98
Prefer not to answer	99

QINC

Which of the following categories best describes your total household income? That is, the total income of all persons in your household, before taxes?

Under $20,000	1
$20,000 to just under $40,000	2
$40,000 to just under $60,000	3
$60,000 to just under $80,000	4
$80,000 to just under $100,000	5
$100,000 to just under $120,000	6
$120,000 to just under $150,000	7
$150,000 and above	8
Prefer not to answer	99

QBORN

Were you born in Canada?

Yes	1
No	2
Prefer not to answer	99

QMINOR [1,5]

Do you consider yourself to belong to any of the following groups?

A member of a visible minority	1
An Aboriginal person	2
A person with a disability	3
None of the above	98
Prefer not to answer	99

QEMP

Which of the following categories best describes your current employment status? Are you...?

Working full-time, that is, 35 or more hours per week	1
Working part-time, that is, less than 35 hours per week	2
Self-employed	3
Unemployed, but looking for work	4
A student attending school full-time	5
Retired	6
Not in the workforce (disability, full-time homemaker, unemployed, not looking for work)	7
Other	77
Prefer not to answer	99

QCOMM

In what type of community do you live?

Urban (town, city, suburb)	1
Rural (small or sparsely populated community, with fewer than 5,000 or so residents, usually with considerable open/farm land surrounding it)	2
Remote (at least 2 hours drive from an urban centre and lacks reliable transportation links)	3
On reserve	4
None of the above	98
Prefer not to answer	99

QGENDER

What is your gender?

Male	1
Female	2
Transgender	3

Do not identify as male, female or transgender	4
Prefer not to answer	99

QFSA

What are the first three characters of your postal code?

Please specify :	77
Prefer not to answer	99

QPROV

Hesitant

In which province or territory do you live?

Alberta	1
British Columbia	2
Manitoba	3
New Brunswick	4
Newfoundland & Labrador	5
Northwest Territories	6
Nova Scotia	7
Nunavut	8
Ontario	9
Prince Edward Island	10
Quebec	11
Saskatchewan	12
Yukon	13
Prefer not to answer	99

THNK

Thank you for participating in our survey.

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